

**Office of
The City Attorney
City of San Diego**

MEMORANDUM

DATE: June 20, 2007

TO: Honorable Mayor Jerry Sanders and City Council

FROM: Michael J. Aguirre, City Attorney

SUBJECT: Sunroad Building Violates Public Utilities Code § 21659

This memorandum sets forth the record relating to your decision to allow Sunroad to continue erecting the Centrum 12 office building at 180 feet after the State of California Department of Transportation advised that such construction violated California Public Utilities Code § 21659(a).

By letter dated 14 September 2006 Jeff R. Brown Aviation Safety Officer of the California Department of Transportation informed Craig Bachmann at Sunroad Enterprises that until Sunroad received a permit from the California Department of Transportation it was unlawful for Sunroad to proceed with construction:

Please be advised that California Public Utilities Code (PUC), Section 21659(a), states in pertinent part, that no person shall construct or alter any structure at a height which exceeds the obstruction standards set forth in Title 14 of the Code of Federal Regulations, Part 77, Supart C (FAR Part 77), relating to objects affecting navigable airspace, unless a permit allowing the construction, alternation or growth is issued by the Department. As detailed in the FAA Airspace Determination referenced above the Centrum 1 building penetrates the Horizontal Surface, as defined in Section 77.25(a) of FAR Part 77.

Until you receive a permit from the Department, it is unlawful for you to proceed with construction. Section 21019 of the PUC outlines potential punishment for related violations. ¹ [Written Warning of Law Violation No.1]

¹ see attached 14 September 2006 letter to Craig Bachmann. Carbon copied: Mike Tussey, City of San Diego Airports Director; San Diego Airports Advisory Committee; David Miller, City of San Diego; San Diego Regional Airport Authority; FAA, AWP 622.

Fifteen (15) days after Written Warning of Law Violation No. 1 on 29 September 2006, Jeff R. Brown, Aviation Safety Officer at the California Department of Transportation, again notified Sunroad, through Sunroad attorney Barbara E. Lichman, that "The Construction of the Sunroad Centrum 1 Building is a violation of PUC Section 21659(a)." Aviation Safety Officer Brown warned that "Without issuance of a permit by the Department, continued construction of any part of the building that exceeds 160 feet above ground level is unlawful."² [Written Warning of Law Violation No. 2]

Thirty-five (35) days after Written Warning of Law Violation No. 1 and twenty (20) days after Written Warning of Law Violation No. 2, on 19 October 2006 the San Diego City Attorney informed and notified Mr. Jim Waring, Deputy Chief Operating Officer, that because the Sunroad Centrum 1 office building exceeded the 160 foot limit established by the Federal Aviation Administration (FAA) a state permit from the California Department of Transportation was required. This memorandum informed Mr. Waring that: "The Project applicant has not sought or obtained the state permit and is continuing construction in violation of state law."³ [Written Warning of Law Violation No. 3]

Eighty-five (85) days after Written Warning of Law Violation No. 1, thirty-nine (39) days after Written Warning of Law Violation No. 2, and twenty (20) days after Written Warning of Law Violation No. 3, on 9 November 2006 Aviation Safety Officer Jeff R. Brown again warned in a letter to Macela Escobar-Eck, Director of the Department of Development Services, that the on-going construction of the Centrum 1 office building was unlawful: "We remind you that the construction of this structure is a violation of California Public Utilities Code (PUC) Section 21659." Mr. Brown continued in his letter of 9 November 2006:

This violation was made evident to the City in the City Attorney's letter dated October 19, 2006, and in our letters to the developer or the developer's attorney dated September 14, 2006, September 29, 2006, and October 13, 2006, copies of which were provided to City Land Use and Economic Development Department staff either directly or via e-mail.⁴ [Written Warning of Law Violation No. 4]

² see attached 29 September 2006 letter to Barbara E. Lichman. Carbon copied to Mike Tussey, City of San Diego Airports Director; David Miller, Attorney, City of San Diego; Tait Galloway, Senior Planner, City of San Diego; Bill Anderson, Director, San Diego Planning & Community Investment Department; San Diego Regional Airport Authority; Tom Story, Vice President of Development for Sunroad Enterprises; Craig Bachmann, Director of Construction for Sunroad Enterprises; FAA, AWP 622.

³ see attached 19 October 2006 memorandum from San Diego City Attorney to Jim Waring,. Carbon copied to Marcela Escobar-Eck, Director of San Diego City Development Services Department, and Kelly Broughton, San Diego City Development Services Department.

⁴ see attached 9 November 2006 letter from Jeff R. Brown to Marcela Escobar-Eck Director of Development Services. Carbon copied to David Miller, Deputy City Attorney; and Carmen Brock, Deputy City Attorney.

One hundred and twenty-five (125) days after Written Warning of Law Violation No. 1, one hundred and ten (110) days after Written Warning of Law Violation No. 2, ninety (90) days after Written Warning of Law Violation No. 3, seventy (70) days after Written Warning of Law Violation No. 4, on 19 January 2007, Aviation Safety Officer Jeff R. Brown notified the City it was enabling Sunroad “to violate State law and seems to disregard public safety, [which] is of great concern to the Department.”⁵ Safety Officer Brown focused on the letter written by Marcela Escobar-Eck to Sunroad on 21 December 2006 that modified the previously issued stop work orders and permitted Sunroad to make “many permanent construction features under the pretense of ‘weather proofing’ the building.”⁶

You directly participated in the decision to allow Sunroad to continue construction even though the State had informed your staff that the height of the building was a violation of state law and hazardous to navigable air space.⁷ On 14 June 2007 you acknowledged that you attended a meeting with Sunroad officials on 19 December 2006 at which “the decision was made to let the building be winterized.”⁸

Safety Officer Brown said in the 19 January 2007 letter to the City that it was “difficult to regard the City’s actions as anything other than an attempt to undermine State law.” He explained the Department of Transportation’s position as follows:

In our letter of November 9, 2006, to the Development Services Department, we directly informed the City that any construction of the building above the height of 160 feet Above Ground Level (AGL) was a violation of California Public Utilities Code (PUC) Section 21659, a State law enacted to prohibit hazards near airports. As stated above, the City’s December 21, 2006 letter, particularly when reviewed with respect to Sunroad’s November 21, 2006, letter to the City requesting many permanent construction features under the pretense of “weather proofing’ the building, makes it difficult to regard the City’s actions as anything other than an attempt to undermine State law.

When the facts of the situation show a developer failed to comply with a federal notification regulation (Federal Aviation Regulation Part 77.17), used that violation of federal regulation to obtain local planning and building approval,

⁵ see attached 19 January 2007 letter from Jeff R. Brown, Aviation Safety Officer for the FAA, to James T. Waring, Deputy Chief Operating Officer for Land Use and Economic Development at the City of San Diego. Carbon copied to Carmen Brock, Deputy City Attorney at the City of San Diego; Honorable Mayor Jerry Sanders; Marcela Escobar –Eck, Development Services Department; San Diego City Council; FAA Western Pacific Region.

⁶ see attached 21 December 2006 letter from Marcela Escobar-Eck, Director of Development Services for the City of San Diego, to Tom Story, Executive Vice President at Sunroad.

⁷ see attached 27 November 2006 letter from Raiyn Bain, Attorney at the California Department of Transportation, to Barbara E. Lichman, attorney for Sunroad.

⁸ see, 14 June 2007 Interview of Mayor Sanders by Roger Hedgecock transcript p. 5.

knowingly began construction of a building determined by a federal agency to be a hazard, constructed parts of the building in violation of State law (PUC Section 21659, and continue to defy State and local attempts to resolve the situation, the reluctance of the City to take the necessary steps to protect its citizenry is a mystery.

As you surely know, the City Attorney of San Diego has filed a complaint against Sunroad on behalf of the City as a necessary first legal step in removing the hazard posed by the Sunroad Centrum 1 building. We ask that you rigorously enforce the Notice, and join with the City Attorney and others united in the interest of public safety, to protect the people of San Diego and local, State and federal interests in Montgomery Field airport for which the City has obligated itself.⁹ [Written Notice of Law Violation No. 5]

Despite the warnings provided to you through City employees¹⁰ and State officials¹¹ you have continued to assist Sunroad's on-going construction of the building in violation of State law. The pretext of your actions is purported concern over possible liability the City may have to Sunroad. However, that does not provide a legal basis for your having permitted Sunroad to continue with its construction of the building without a permit as required under Public Utilities Code Section 21659.

Documents obtained from the San Diego Regional Airport Authority which belonged to the City of San Diego and which were removed from the City offices show that you have used public funds to lobby for Sunroad's proposals to change existing airport use that would allow Sunroad to keep the building at a height above the 160 foot level established by the FAA.

Specifically, without disclosure to the City Attorney, you wrote a letter to the Airport Authority on 2 March 2007 requesting "changes to operations or notices" that would allow the Sunroad building to remain at a height above the FAA set limit of 160 feet.¹² Thereafter, Ted Sexton and Jim Barwick, at public expense, attempted to lobby the FAA to adopt plans that

⁹ see attached 19 January 2007 letter from Jeff R. Brown, Aviation Safety Officer for the FAA, to James T. Waring, Deputy Chief Operating Officer for Land Use and Economic Development at the City of San Diego. Carbon copied to Carmen Brock, Deputy City Attorney at the City of San Diego; Honorable Mayor Jerry Sanders; Marcela Escobar-Eck, Development Services Department; San Diego City Council; FAA Western Pacific Region.

¹⁰ see 1 December 2006 letter from City Attorney to Jim Waring; Subject: "Sunroad Enterprises, Inc. Centrum I Building Stop Work Notice". Carbon copied to Honorable Mayor and City Council

¹¹ see 25 May 2007 letter from Andrea Lynn Hock, Legal Affairs Secretary for the Office of the Governor Arnold Schwarzenegger.

¹² see attached 2 March 2007 letter to Alan D. Bersin. Carbon copied: Thella Bowens, President/CEO of the San Diego County Regional Airport Authority; San Diego County Regional Airport Authority.

would allow the Sunroad Centrum 1 building to stay at a height above the 160 foot limit set by the FAA.¹³ Those efforts were continuing as late as last week.

Yesterday, I requested that you sign a stop work order that would end all construction at the Sunroad Centrum 1 building.¹⁴ Once again, you attempted to use the excuse of Sunroad suing the City as an excuse for not taking the action needed to stop the on-going violation of state permit law set forth in Public Utilities Code § 21659(a).

Thereafter, I had Don McGrath meet with Fred Sainz and further explain the need for you to join me in supporting the full stop work order. Additionally, per your request, Mr. McGrath obtained a memorandum from Christopher Garrett, attorney from Latham & Watkins. Mr. Garrett's opinion was sought to answer your questions concerning any additional liabilities to Sunroad as a result of your joining with me in the request for a total stop work order on the Sunroad building. Mr. Garrett's memorandum makes clear that there would be no additional liability as a result of our joint request for a total stop work order.

The fact that Sunroad might bring additional actions against the City is not a legal basis for you to assist Sunroad's violation of applicable law. You have a legal duty to take the steps needed to stop the construction of a building for which a state permit is required. You have been repeatedly advised of your legal duty.

You were elected to be San Diego's first "Strong Mayor." Now is your opportunity to show that you are, in fact, the "Strong Mayor" that San Diego citizens elected. Do so by ordering Sunroad to take down the top stories of its unlawful building.

Municipal Code § 121.0312 provides you the authority to order Sunroad to restore the building to its lawful condition.¹⁵ Further, Sunroad must comply with such an order at its own expense, according to San Diego Municipal Code § 121.0312(c), which states in pertinent part: "Any restoration or mitigation imposed by the City Manager or Building Official shall be at the sole cost of the responsible person."¹⁶

¹³ see attached e-mails and related presentation to the FAA of the proposal that would allow the Sunroad Centrum 1 building to stay above 160 feet.

¹⁴ see 19 June 2007 letter from City Attorney Michael J. Aguirre to Honorable Mayor Jerry Sanders and City Council. Subject: "Stop Work and Use Order – Sunroad Centrum I Building."

¹⁵ San Diego Municipal Code § 121.0312 – Restoration and Mitigation as a Remedy

¹⁶ San Diego Municipal Code § 121.0312(c)

Honorable Mayor Jerry Sanders

June 20, 2007

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Rather than continuing the focus on your involvement with this unlawful building, I request that you take this opportunity to show as strong mayor, you can and will act in the public interest by ordering Sunroad to reduce the building to a lawful height.

A handwritten signature in black ink, appearing to read "Michael J. Aguirre", written over a horizontal line.

Michael J. Aguirre
City Attorney

MJA

cc: San Diego City Council
Jeff R. Brown, Aviation Safety Office for the California Department of
Transportation
FAA, AWP 622

Table of Exhibits

1	14 September 2006 letter to Craig Bachman. Carbon copied: Mike Tussey, City of San Diego Airports Director; San Diego Airports Advisory Committee; David Miller, City of San Diego; San Diego Regional Authority; FAA, AWP 622.
2	29 September 2006 letter to Barbara E. Lichman. Carbon copied to Mike Tussey, City of San Diego Airports Director; David Miller, Attorney, City of San Diego; Tait Galloway, Senior Planner, City of San Diego; Bill Anderson, Director, San Diego Planning & Community Investment Department; San Diego Regional Airport Authority; Tom Story, Vice President of Development for Sunroad Enterprises; Craig Bachmann, Director of Construction for Sunroad Enterprises; FAA, AWP 622.
3	19 October 2006 memorandum from San Diego City Attorney to Jim Waring,. Carbon copied to Marcela Escobar-Eck, Director of San Diego City Development Services Department, and Kelly Broughton, San Diego City Development Services Department.
4	9 November 2006 letter from Jeff R. Brown to Marcela Escobar-Eck Director of Development Services. Carbon copied to David Miller, Deputy City Attorney; and Carmen Brock, Deputy City Attorney.
5	19 January 2007 letter from Jeff R. Brown, Aviation Safety Officer for the FAA, to James T. Waring, Deputy Chief Operating Officer for Land Use and Economic Development at the City of San Diego. Carbon copied to Carmen Brock, Deputy City Attorney at the City of San Diego; Honorable Mayor Jerry Sanders; Marcela Escobar –Eck, Development Services Department; San Diego City Council; FAA Western Pacific Region.
6	21 December 2006 letter from Marcela Escobar-Eck, Director of Development Services for the City of San Diego, to Tom Story, Executive Vice President at Sunroad.
7	27 November 2006 letter from Raiyn Bain, Attorney at the California Department of Transportation, to Barbara E. Lichman, attorney for Sunroad.
8	14 June 2007 Interview of Mayor Sanders by Roger Hedgecock transcript p. 5.
9	19 January 2007 letter from Jeff R. Brown, Aviation Safety Officer for the FAA, to James T. Waring, Deputy Chief Operating Officer for Land Use and Economic Development at the City of San Diego. Carbon copied to Carmen Brock, Deputy City Attorney at the City of San Diego; Honorable Mayor Jerry Sanders; Marcela Escobar –Eck, Development Services Department; San Diego City Council; FAA Western Pacific Region.
10	1 December 2006 letter from City Attorney to Jim Waring; Subject: “Sunroad Enterprises, Inc. Centrum I Building Stop Work Notice”. Carbon copied to Honorable Mayor and City Council
11	25 May 2007 letter from Andrea Lynn Hock, Legal Affairs Secretary for the Office of the Governor Arnold Schwarzenegger.
12	2 March 2007 letter to Alan D. Bersin. Carbon copied: Thella Bowens, President/CEO of the San Diego County Regional Airport Authority; San Diego County Regional Airport Authority.
13	e-mails and related presentation to the FAA of the proposal that would allow the Sunroad Centrum 1 building to stay above 160 feet.

14	19 June 2007 letter from City Attorney Michael J. Aguirre to Honorable Mayor Jerry Sanders and City Council. Subject: "Stop Work and Use Order – Sunroad Centrum I Building."
15	San Diego Municipal Code § 121.0312 – Restoration and Mitigation as a Remedy
16	San Diego Municipal Code § 121.0312(c)

Exhibit 1

DEPARTMENT OF TRANSPORTATION

DIVISION OF AERONAUTICS – M.S.#40

1120 N STREET

P. O. BOX 942873

SACRAMENTO, CA 94273-0001

PHONE (916) 654-4959

FAX (916) 653-9531

TTY (916) 651-6827

*Flex your power!
Be energy efficient!*

September 14, 2006

Via Overnight Mail and Facsimile to 858-362-8448

Mr. Craig Bachmann
Sunroad Enterprises
4445 Eastgate Mall, Suite 400
San Diego, CA 92121-1979

Dear Mr. Bachmann:

It has come to attention of the California Department of Transportation (Department), Division of Aeronautics, that the Sunroad Centrum 1 building is under construction and already at its maximum height of 180 feet above ground level. The Federal Aviation Administration (FAA) determined that the Centrum 1 building, at that height, is a hazard to air navigation in their Airspace Determination, dated August 11, 2006, for Aeronautical Study No. 2006-AWP-4601-OE.

Please be advised that California Public Utilities Code (PUC), Section 21659(a), states in pertinent part, that no person shall construct or alter any structure at a height which exceeds the obstruction standards set forth in Title 14 of the Code of Federal Regulations, Part 77, Subpart C (FAR Part 77), relating to objects affecting navigable airspace, unless a permit allowing the construction, alteration or growth is issued by the Department. As detailed in the FAA Airspace Determination referenced above, the Centrum 1 building penetrates the Horizontal Surface, as defined in Section 77.25(a) of FAR Part 77.

Until you receive a permit from the Department, it is unlawful for you to proceed with construction. Section 21019 of the PUC outlines potential punishment for related violations.

Please contact our office upon receipt of this correspondence to discuss the permit application process and the status of the current building structure. We can be reached at (916) 654-4565, or via e-mail at: jeff.brown@dot.ca.gov.

Sincerely,

JEFF R. BROWN
Aviation Safety Officer

c: Mike Tussey, City of San Diego Airports Director
San Diego Airports Advisory Committee
David Miller, City of San Diego
San Diego Regional Airport Authority
FAA, AWP 622

Exhibit 2

DEPARTMENT OF TRANSPORTATION
DIVISION OF AERONAUTICS - M.S.#40
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P. O. BOX 942873
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PHONE (916) 654-4959
FAX (916) 653-9531
TTY (916) 651-6827



*Flex your power!
Be energy efficient!*

September 29, 2006

Via Overnight Mail and Facsimile to (714)-384-6521

Ms. Barbara E. Lichman
Chevalier, Allen & Lichman, LLP
695 Town Center Drive, Suite 700
Costa Mesa, California 92626-7187

Dear Ms. Lichman:

Thank you for your letter of September 18, 2006, regarding the violation of California Public Utilities Code (PUC) Section 21659 by the construction of the Sunroad Centrum 1 Building near Montgomery Field airport. Unfortunately, your letter does not answer the concerns of the California Department of Transportation (Department), Division of Aeronautics.

The position stated in our letter of September 14, 2006 to Sunroad Enterprises remains the same. The construction of the Sunroad Centrum 1 Building is a violation of PUC Section 21659(a). Without issuance of a permit by the Department, continued construction of any part of the building that exceeds 160 feet above ground level is unlawful. That height, as specified by the Federal Aviation Administration (FAA) in their Notice of Presumed Hazard, dated April 24, 2006, was the maximum height an object in that location could reach without resulting in a Determination of Hazard to Air Navigation (as determined in the FAA Airspace Determination, dated August 11, 2006, for Aeronautical Study No. 2006-AWP-4601-OE for the planned building height of 180 feet).

If construction in violation of PUC Section 21659 proceeds, you are proceeding at your own risk, as you have been notified of the Department's position. Additionally, if an aircraft accident occurs at the site of the Sunroad Centrum 1 Building because of this PUC violation, you are assuming all liability for the accident. Further attempts to obfuscate the issue or cause additional delay with your legal responsibility to comply with Section 21659 of the State Aeronautics Act will result in enforcement action by the Department.

Sincerely,

Original signed by

JEFF R. BROWN
Aviation Safety Officer

c: Mike Tussey, Airports Director, City of San Diego
San Diego Airports Advisory Committee
David Miller, Attorney, City of San Diego
Tait Galloway, Senior Planner, City of San Diego
Bill Anderson, Director, San Diego Planning & Community Investment Department
San Diego Regional Airport Authority
Tom Storey, Vice President Development, Sunroad Enterprises
Craig Bachmann, Director of Construction, Sunroad Enterprises
FAA, AWP 622

Exhibit 3

DAVID E. MILLER
DEPUTY CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO
MICHAEL J. AGUIRRE
CITY ATTORNEY

CIVIL DIVISION
1200 THIRD AVENUE, SUITE 1100
SAN DIEGO, CALIFORNIA 92101-4100
TELEPHONE (619) 533-5800
FAX (619) 533-5856

October 19, 2006

VIA HAND DELIVERY

Jim Waring
Deputy Chief Operating Officer
Department of Land Use and Economic Development
City of San Diego

Dear Mr. Waring:

Sunroad Centrum Building 1

As you are aware, on August 11, 2006, the Federal Aviation Administration [FAA], completed an aeronautical study under the provisions of 49 U.S.C., Section 44718 and Title 14 of the Code of Federal Regulations, Part 77, concerning the Sunroad Centrum Building 1 Project [Project]. The aeronautical study revealed that the structure as built would have a "*substantial adverse effect* on the safe and efficient utilization of the navigable airspace by aircraft..." [emphasis added]. In light of this conclusion, the FAA has determined that the Project is a "hazard to air navigation." See *FAA Aeronautical Study No. 2006-AWP-4601-OE*. This determination was subject to review on or before September 10, 2006. No request for review was sought by the Project applicant. Thus, the FAA determination stands.

Under California Government Code section 50485.2, the City has a duty to prevent the creation of any hazard to air navigation using the police powers of the City. California Government Code section 50485.2 reads in relevant part:

It is hereby found that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking off and maneuvering of the aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein. Accordingly, it is hereby declared: (a) that the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question; and (b) that it *is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented by*

appropriate exercise of the police power or the authority conferred by Article 2.6 (commencing with Section 21652) of Part 1 of Division 9 of the Public Utilities Code. [Emphasis added].

In addition, San Diego Municipal Code section §121.0302(b)(4) makes it unlawful for any person to maintain or allow the existence of any condition that creates a "public nuisance." The City's Municipal Code defines "public nuisance" as "any condition caused, maintained or permitted to exist which constitutes a threat to the public's health, safety and welfare." SDMC §11.0210. Furthermore, California Government Code section 50485.2 defines "public nuisance" as the "creation or establishment of an airport hazard."

The Project, under both state and local law, fits squarely within the definition of a "public nuisance." As an "airport hazard," the Project is a "public nuisance," and, as a condition constituting a threat to the public health, safety, and welfare, it is also a "public nuisance." Therefore, by maintaining the structure at its current height, the Project applicant is maintaining a "public nuisance" in violation of San Diego Municipal Code section 121.0302(b)(4).

Pursuant to California Government Code Section 38773, the City has the authority to judicially abate public nuisances by filing criminal or civil actions. The City also has the authority to make the expense of abatement of the nuisance a special assessment, or a lien against the property on which it is maintained and a personal obligation against the property owner, in accordance with California Government Code Sections 38773.1 or 38773.5. SDMC §12.0204. The City may also abate any violation of a state code, which constitutes a "public nuisance." SDMC §12.0602.

In addition, to being a "hazard to air navigation" and a "public nuisance," the Project is being constructed without permits required by California law. California Public Utilities Section 21659(a) requires that an applicant obtain a permit from the California Department of Transportation prior to building any structure that would exceed the FAA obstruction standards included in Title 14 of the Code of Federal Regulations, Part 77, Subpart C [Part 77]:

No person shall construct or alter any structure or permit any natural growth to grow at a height which exceeds the obstruction standards set forth in the regulations of the Federal Aviation Administration relating to objects affecting navigable airspace contained in Title 14 of the Code of Federal Regulations, Part 77, Subpart C, unless a permit allowing the construction, alteration, or growth is issued by the department.

At Project location, a structure of 180' would exceed the obstruction standards under Part 77 and, therefore, require a state permit prior to construction. The Project applicant has not sought or obtained the state permit and is continuing construction in violation of state law. This violation is punishable as a criminal offense with a fine of not more than one thousand dollars (\$1,000) or by imprisonment of not more than six months, or both. Public Utilities Code §21019.

Finally, the City's permit revocation proceedings authorize the revocation of the building permit for the Project. Permit revocation is permitted where project approval violates an applicable statute, ordinance, law, or regulation; or when the approval is detrimental to the public health, safety, or welfare; or when the approval constitutes a public nuisance. SDMC §§121.0314(c)(4) and (5). The Project, as approved, violates Federal Regulations, the state Public Utility Code, and the San Diego Municipal Code. Additionally, the approval is detrimental to the public health, safety, and welfare, and constitutes a "public nuisance."

With knowledge of the declaration by the FAA that the building is a "hazard to air navigation," the knowledge that it is a public nuisance under both state and local law, and the knowledge that the building is being constructed in violation of state law, the City must issue a "Stop Work Order" for the Project.

Sincerely yours,

MICHAEL J. AGUIRRE, City Attorney

By

David E. Miller
Deputy City Attorney

DEM:dem

Attachments

cc: Michael J. Aguirre
Karen Heumann
Carmen Brock
Abbe Wolfsheimer
Marcela Escobar-Ecks
Kelly Broughton

Exhibit 4

DEPARTMENT OF TRANSPORTATION
DIVISION OF AERONAUTICS - M.S.#40
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PHONE (916) 654-4959
FAX (916) 653-9531
TTY (916) 651-6827

RECEIVED
NOV 14 2006
DEVELOPMENT SERVICES
File your power!
Be energy efficient!

November 9, 2006

Ms. Marcela Escobar-Eck, Director
Department of Development Services
City of San Diego
1222 First Avenue, MS 501
San Diego, CA 92101-4101

Dear Ms. Escobar-Eck:

The California Department of Transportation (Department), Division of Aeronautics has obtained a copy of the Stop Work Notice (Notice) issued by the City of San Diego (City) on October 27, 2006, for the Sunroad Centrum 1 (aka Sunroad Centrum 12) building located at 8620 Spectrum Center Boulevard. Although release of the Notice appears to have been unnecessarily delayed, the Department appreciates the fact the City took this essential step. However, we must address several potential problems with the Notice.

Our first concern is the Notice only states "FAA regulation must be clarified prior to the continuing construction of the structure". We remind you that the construction of this structure is a violation of California Public Utilities Code (PUC) Section 21659. This violation was made evident to the City in the City Attorney's letter dated October 19, 2006, and in our letters to the developer or the developer's attorney dated September 14, 2006, September 29, 2006, and October 13, 2006, copies of which were provided to City Land Use and Economic Development Department staff either directly or via e-mail.

Additionally, the Notice stipulates that no work is to be done in the top seventeen feet of the structure. The aeronautical studies performed by the Federal Aviation Administration (FAA) on this building project determined that any part of the proposed 180 foot tall structure constructed above 160 feet is considered to be a hazard to air navigation. Any construction over 160 feet is a violation of PUC 21659. That means any construction in the top twenty feet of the building would constitute a hazard and be a violation of State law.

While the current wording in the Notice may have been chosen for brevity or be the result of a misunderstanding, the Notice must reflect the parameters outlined above. Failure to enforce a properly constructed Notice until the PUC Section 21659

Ms. Marcela Escobar-Eck

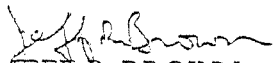
November 9, 2006

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violation is resolved may expose the City to liability, as a result of authorizing further violation of the State statute.

The Department is sure the City shares our concerns and desire to ensure applicable law is upheld. If you have any additional questions or need further assistance, please do not hesitate to contact us at (916) 654-4565, or via e-mail at: jeff.brown@dot.ca.gov.

Sincerely,



JEFF R. BROWN

Aviation Safety Officer

c: David Miller, Deputy City Attorney, City of San Diego
Carmen Brock, Deputy City Attorney, City of San Diego

Exhibit 5

DEPARTMENT OF TRANSPORTATION
DIVISION OF AERONAUTICS – M.S.#40
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*Flex your power!
Be energy efficient!*

January 19, 2007

Mr. James T. Waring
Deputy Chief Operating Officer
Land Use and Economic Development
Office of the Mayor
City of San Diego
202 C Street, 9th Floor
San Diego, CA 92101

Dear Mr. Waring:

The California Department of Transportation (Department), Division of Aeronautics has obtained a copy of the revised Stop Work Notice (Notice) issued by the City of San Diego (City) on December 13, 2006 for the Sunroad Centrum 1 (aka Sunroad Centrum 12) building located at 8620 Spectrum Center Boulevard. We have also reviewed a copy of the December 21, 2006 letter from Ms. Marcia Escobar-Eck of your Development Services Department to Sunroad Enterprises (Sunroad) authorizing construction of the Sunroad Centrum 1 building above the level specified in the Notice. The City's apparent failure to enforce the Notice, which enables the developer to violate State law and seems to disregard public safety, is of great concern to the Department.

In our letter of November 9, 2006, to the Development Services Department, we directly informed the City that any construction of the building above a height of 160 feet Above Ground Level (AGL) was a violation of California Public Utilities Code (PUC) Section 21659, a State law enacted to prohibit hazards near airports. As stated above, the City's December 21, 2006 letter, particularly when reviewed with respect to Sunroad's November 21, 2006, letter to the City requesting many permanent construction features under the pretense of 'weather proofing' the building, makes it difficult to regard the City's actions as anything other than an attempt to undermine State law.

Additionally, while we appreciate that you revised the Notice from halting work in the top 17 feet of the building to the top 20 feet, our review of plans approved by the City show that stopping work in the top 20 feet is still inadequate. The "20 feet" figure was based on data provided by Sunroad to the Federal Aviation Administration for a 180-foot tall building. Twenty feet was the amount the building exceeded the Federal Aviation Administration (and Department) standards, which would have allowed a building that was 160-foot tall. However, the plans approved by the City on February 10, 2006, show that the highest point of the building is approximately 602 feet Above Mean Sea Level, which translates to a true building height of 186 feet AGL. This means that the upper 26 feet of the building constitutes a hazard. As called for by our mission to protect aviation safety, people and property, we are notifying you of this fact, and request that you revise and reissue the Notice so that no work is accomplished in the top 26 feet of the Sunroad Centrum 1 building.

Mr. James T. Waring
January 19, 2007
Page 2

The City's attempts to pass liability for the illegal construction on to Sunroad entirely miss the point. This issue is not about who has liability for the hazard, but taking action to remove the hazard so that liability is not an issue. When the facts of the situation show a developer failed to comply with a federal notification regulation (Federal Aviation Regulation Part 77.17), used that violation of federal regulation to obtain local planning and building approval, knowingly began construction of a building determined by a federal agency to be a hazard, constructed parts of the building in violation of State law (PUC Section 21659), and continue to defy State and local attempts to resolve the situation, the reluctance of the City to take the necessary steps to protect its citizenry is a mystery.

As you surely know, the City Attorney of San Diego has filed a complaint against Sunroad on behalf of the City as the necessary first legal step in removing the hazard posed by the Sunroad Centrum 1 building. We ask that you rigorously enforce the Notice, and join with the City Attorney and others united in the interest of public safety, to protect the people of San Diego and local, State, and federal interests in Montgomery Field airport for which the City has obligated itself. If you have any additional questions or need further assistance, please do not hesitate to contact us at (916) 654-4565 or e-mail at jeff.brown@dot.ca.gov.

Sincerely,

Original Signed by

JEFF R. BROWN
Aviation Safety Officer

c: Carmen Brock, Deputy City Attorney, City of San Diego
Honorable Mayor Jerry Sanders
Ms. Marcela Escobar-Eck, Director, Development Service Department
San Diego City Council
FAA Western Pacific Region

Exhibit 6

#17



THE CITY OF SAN DIEGO

December 21, 2006

VIA FACSIMILE TO RICHARD D. VAN
858/362-8448Mr. Tom Story
Sunroad Enterprises
4445 Eastgate Mall, Suite 400
San Diego, CA 92121

Dear Mr. Story,

Subject: 8620 Spectrum Center Blvd. Approval 303319

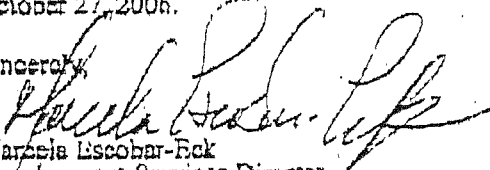
Development Services Department of the City of San Diego has reviewed your letter of request to install the weather proof covering on the 12-story structure mentioned above.

In the interest of saving the structure from damage which could be caused by weather, your request will be allowed for this phase of construction for the items discussed at the field meeting of December 21, 2006 with Joe Harris subject to your concurrence with the terms of this letter.

The "Stop Work Order," issued December 13, 2006, halting work on the top twenty feet (20' Ft) of the structure, shall remain in place.

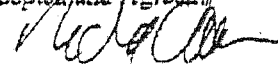
This is based on our understanding that Sunroad accepts and acknowledges that any work performed from and after the date of the Notice (i.e., October 27, 2006) is at Sunroad's own risk and without any claim against the City. Specifically, Sunroad acknowledges and agrees that neither Sunroad nor its representatives may, under any circumstances, make any claim or assert any argument against the City for any costs or expenses of any type incurred after October 27, 2006 with respect to the work, nor assert in any way that the lifting of the Notice estops the City from pursuing the remedies that may result from the ongoing FAA inquiry. Said another way, whatever rights either party has vis-à-vis the other party will be the rights as they existed on October 27, 2006.

Sincerely,


Marcela Liscohar-Eck
Development Services Director

JH/lgb

Accepted and Agreed:


Tom Story
Date 12/27/06
RICHARD VAN

Development Services

1777 First Street, Suite 401, San Diego, CA 92101



Exhibit 7

DEPARTMENT OF TRANSPORTATION

LEGAL DIVISION – MS 57

1120 N STREET, SACRAMENTO, CA 95814

P. O. BOX 1438, SACRAMENTO, CA 95812-1438

PHONE (916) 654-2630

FAX (916) 654-6128

TTY (916) 654-4086

*Flex your power!
Be energy efficient!*

November 27, 2006

Barbara E. Lichman, Ph.D
Chevalier, Allen & Lichman LLP
695 Town Center Drive, Suite 700
Costa Mesa, California 92626

Re: Sunroad Centrum –Compliance With *Public Utilities Code* § 21659

Dear Ms. Lichman:

I wanted to follow up after our telephonic conversation, and further address some of the issues that you raised in your letter of October 24, 2006.

The Department stands firm in its position that the proposed construction of the Sunroad Centrum project violates Public Utilities Code, Section 21659, as the height of the building is not only an obstruction, but has been determined to be hazardous to navigable airspace as well.

Sunroad Centrum's frivolous arguments that regulation must be passed in order to give Sunroad Centrum notice of the permit requirement lacks merit. As you are aware, section 21659 is a state statute, and not a "regulation, criterion, bulletin, manual, instruction..."

Furthermore, Sunroad Centrum's arguments are weak as it is obvious that Sunroad Centrum is attempting to deflect its own willful misconduct as it failed to comply with both state statutes and federal regulations. The subject project was "piece-mealed" for many years, intentionally staying under the radar of both state and federal jurisdiction. Thus, it defies logic as to why FAA Form 7460-1, the Notice of Proposed Construction was only recently filed in April of 2006, after construction started.

The Department is assured and confident that there is a high probability that a Court of law will not support Sunroad Centrum's arguments, when the history of how this project gained fruition and the processes that Sunroad Centrum took to conceal and divert its actions are revealed.

As of now, the Department and the FAA's goals are to reduce the height of the proposed construction based on safety concerns. Thus, Sunroad Centrum has the following options:

- (1) Lower the height of the building to a level not considered "hazardous" by the FAA.
- (2) Appeal the FAA finding that determined the subject structure to be hazardous. If unsuccessful, compliance with either option 1 or 3 must be achieved.

(3) Apply for a permit from the Department *and* obtain approval from the Department for the construction of a building to a height that exceeds FAR 77 imaginary surfaces. Since the FAA has already determined that the height of this building is considered hazardous, it would be Sunroad Centrum's responsibility to present convincing evidence to the Department that the issuance of a permit would not be detrimental to aviation safety, in spite of the FAA's determination. Also, please note, it is not the Department's responsibility to validate or critique the FAA's airspace evaluation process.

Thus, Sunroad Centrum's current position, which is simply to take no action is not acceptable, nor a viable option.

Finally, if Form 7460-1 were presented to the FAA a timely manner, or if Sunroad Centrum complied with state statutes, Sunroad Centrum would not find itself in its present situation. This goes to the very heart of the arguments raised by City Attorney David when Mr. Miller correctly stated that Sunroad Centrum's lack of appealing the FAA determination is a blatant acknowledgement by Sunroad Centrum that the subject proposed project is a hazard and an obstruction to navigable airspace, Mr. Miller also correctly argued that the Sunroad Centrum must apply for a permit requiring compliance with the State Aeronautics Act.

The purpose of the State Aeronautics Act is to further, protect, encourage and promote the safety to the public by:

(c) Effecting uniformity of the laws and regulations relating to aeronautics consistent with federal aeronautics laws and regulations.

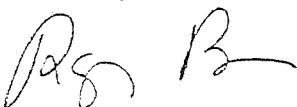
(d) Granting to a state agency powers, and imposing upon it duties, so that the state may properly perform its functions relative to aeronautics and effectively exercise its jurisdiction over persons and property, assist in the development of a statewide system of airports...

(e) **Establishing only those regulations which are essential** and clearly within the scope of the authority granted by the Legislature, in order that persons may engage in every phase of aeronautics with the least possible restriction consistent with the safety of the rights of others... (See Public Utilities Code, Section 21002. Also see Section 21243)

Thus, the effect of the State Aeronautics Act is that it does not limit the power of the State to regulate airport hazards or local zoning. (See Public Utilities Code, Section 21005)

Several weeks ago, you had indicated that Sunroad Centrum was attempting to cooperate in good faith with the City, and requested that the Department withhold from taking further action until Sunroad had an opportunity to do so. Please indicate the status of your negotiations by December 15, 2006.

Sincerely,



RAIYN BAIN
Attorney

Exhibit 8

Roger Hedgecock's Interview with Mayor Jerry Sanders
KOGO Radio
June 14, 2007 4:30 p.m.

RH = Roger Hedgecock
JS = Mayor Jerry Sanders

RH: Well, I didn't, but, I have to admit it was _____. She's our Pink Floyd expert. Laughter. Uh, this has been an interesting week for you.

JS: This has been an interesting week for me. As it is every week.

RH: Well, I know this this one got very interesting, because whereas in the first part of your term, you and Mike Aguirre were working pretty closely together and I was talking to Kevin Faulconer the other day and he was kind of pining for the time when uh you know you and he and Aguirre were getting things done and working together and it uh it blew up this week uh pretty significantly, over the subject of the Sunroad uh project.

JS: Well you know I I actually think it blew up over the budget. And you know when you make reform everybody's for it until it affects them and when you have to streamline the City and you have to cut staff and you have to make tough decisions, uh everybody's for that unless it affects them. And I I really think this is as much about that issue as anything else. And you you know we cut a lot of employees. I was happy to get the budget signed yesterday. Um, not as many cuts as I had wanted, but I still think it was a good budget with 639 uh positions cut permanently, along with the ones we had last year, adding up to about seven hundred, er 650. Um, so I, you know, I I understand uh the consternation of the City Attorney over uh not getting additional staff in there. But I think that's got a lot to do with it also.

RH: Okay, so his attack in in terms of the charges he's made of regarding Sunroad are motivated because he didn't get enough lawyers.

JS: I think you know, I I I think Mike cares very deeply about the Sunroad issue and I'm not going to try and take that away from him. And I think that's important to acknowledge that. And I will.

RH: Okay.

JS: And I think it's an important issue also.

RH: Uh, last week when I asked you about this issue.

JS: Right.

RH: Uh, let me give you the question and answer from last week's interview so we can set this up so you'll know. . .

JS: Well, I can read it back to you if you'd like. I've got it transcribed also.

RH: Well I want our listeners to hear it. Here it is:

JS: Okay.

Running Tape: (Hedgecock plays back last week's interview with Mayor Sanders):

RH: . . ."City Attorney is saying that uh you have uh borrowed the services of an executive from the San Diego Airport Authority, one Ted Sexton, and that he is uh trying to discover a way to change the flight patterns of Montgomery Field to allow the too tall building to remain the same height because it's no longer a hazard, is that true?

JS: No, we brought Ted Sexton over on an agreement with the uh Airport Authority where uh he is a loan executive. He is not uh paid a salary by the City of San Diego. He is instead paid by the Airport Authority and his job is to evaluate um whether Brown Field and Montgomery Field are being run uh correctly and whether we should be doing it, or whether the Airport Authority should be doing it."

(Hedgecock finishes playing back last week's interview with Mayor Sanders)

RH: So, that's uh, there was a longer answer, but that's the meat of it. Um, now, you know, then Aguirre sends me this letter dated March 2nd, signed by you to Alan Bersin at the San Diego Regional Airport Authority, the chairman. Uh, and it's regarding Montgomery Field Sunroad litigation. And it says, "Dear Alan, the City of San Diego is involved in litigation regarding a building constructed by Sunroad Enterprises near Montgomery Field. The building is already constructed to its maximum height, although interior improvements are not complete." Uh then you skip it skips, I'll skip down to say the part of this, "I would appreciate it and am requesting that the Airport Authority assist us in analyzing the situation..." uh and I guess they are talking about Sunroad, "...and in working with the FAA and other interested stakeholders in an attempt to resolve this issue. Given the Authority staff experience in aviation and in FAA matters, your help would be invaluable providing my office with clear and dispassionate guidance and advice. Let me know if the Authority will help with this important effort." It doesn't say anything about the uh, you know, the evaluation of whether Brown Field/Montgomery Field are going to be run correctly or whether or not the City should be doing it, it says you need help in the Sunroad FAA's controversy.

JS: You, you know Roger, I, I understand exactly what you're saying. And if I misled you, I'm sorry, because I take this seriously. But let me take a few minutes to put this in context with a couple of other memos and some other conversations that had gone on prior to this. Um, early in the administration, and I'm talking about even before Jim W____, Jim Barwick uh were on board, Ronne Froman, uh Rick Reynolds, uh discussed options uh for greater efficiencies and and started talking about the airport issue. Uh, and, in fact, in January of '06, uh Ronne informally contacted uh the Airport Authority and expressed interest uh in having them take a look at taking over managerial responsibility of both Brown and Montgomery Fields. So, those conversations started in January. And, in fact, in a board communication from the San Diego County Regional Airport Authority, and this one's all board members, and anybody else who wanted it, Thela Bowman, and this is in March of 2006, says basically "in January staff was contacted by members of the Mayor's staff with the idea of discovering if the Authority has an interest in managing or controlling City airports." It goes on from there. Uh, I wrote back a letter in June of 2006, and that's to Thela Bowman, and I said, "this letter confirms the City of San Diego's interest in exploring the possibility of an agreement with the San Diego County Regional Airport Authority uh to assume control of Brown and Montgomery Fields." And I uh talk about several things that an agreement we could talk about, uh general financial uh arrangements, lease terms, duration, ownership, uh revenues, the role and authority of the City Council and management and decision making. Uh, I talked about the Airport Capital Improvement Program, along with uh FAA and that, grant issues with FAA, environmental cleanup – a whole list of issues. Um, and another discussion took place in December uh with Ronne Froman and Jim Waring, and Mike Tussey, and Thela Bowman, and Ted Sexton, to discuss the future of Brown Field and Montgomery Field. So you we've got all of those um issues coming forward. Uh, you know, this started almost a year before these other issues came forward. And we started talking with the Airport Authority about that. And when the whole issue with uh Montgomery Field came up we did send over those letters. Uh, but it was to, it's the whole scope. And if you look at the March 31st um services agreement, um, you've got the scope of services right in there. It talks about FAA. Um, work with City staff to identify issues relating to FAA and Cal Trans to facilitate increased communication. And that's something we've sorely needed and we have used, uh over the last several months, I mean, we have worked on all the issues with Montgomery Field and the Sunroad. But, as you brought up last week, we also have identified, because of the coordination there now, uh an issue in Banker Hill. Where uh the FAA issued a stop work order to uh an architect on a project uh and then later rescinded it because the communication we had back and forth because it, they mismeasured the building. It was actually the right height; it wasn't over the height limit.

RH: Alright, but let's talk about Sunroad.

JS: So that's

RH: I mean, I I under, I understand that you had these previous things, but when you actually sent a letter to ask for Ted Sexton which you hadn't done before March 2nd, 2007, right?

JS: No, but we had asked for the help on the whole thing.

RH: Well, okay. But you didn't ask for a loan executive. You didn't ask for a formal uh sending the guy over to actually start doing work. When you did ask for that, it was for the purpose of the Sunroad litigation, and Alan Bersin wrote you back on March 12th, and he said, in part, "Thank you for your letter dated March 2nd to Mayor Sanders in which you request assistance San Diego County Regional Airport Authority to help resolve issues surrounding the Sunroad Enterprises building near Montgomery Field. We are glad to provide the assistance you requested."

JS: Right.

RH: Um.

JS: We also put together that agreement, the services agreement. Uh you, you, and you know, and I sat with Mike Aguirre on May 18th and this wasn't an issue. And all those scopes of services and everything were out in the public then. So, you know I guess what I'm telling you is there's a larger context to all of this. And if I confused you, or if I've misrepresented it to you, I apologize for that. That's my fault.

RH: Well, it would have, it would have been more understandable had you said, all of what you just said. Mainly we had all these previous conversations, and we are concerned about the effect of administration, but we had a crisis situation with Sunroad, so for all of that uh Ted Sexton came over and started working.

JS: Well, I agree with you. It would have been much less confusing.

RH: Now, here's a more serious problem. Um, Enoch Light is not only, I guess, the name of a uh obscure '70's rock band, but uh your *nom de guerre* in terms of [laughs] of e-mail.

JS: No.

RH: It isn't?

JS: No. It's the City's, uh the Mayor's Office e-mail system. And uh, I learned this today; I didn't know what it was. Uh each of the different departments in the City

have their own domain. And they're named different things, uh by different departments. And this was named by uh the person from DPC a few years ago when uh they brought in Enoch Light, which is a uh an e-mail, it's a domain within the City's GroupWise system.

RH: So if something, if an e-mail goes out from Enoch Light, who is it from?

JS: It could be from anybody in the Mayor's Office. Or anybody, I don't know how far that goes.

RH: Okay, and if you say if you got a

JS: I don't use e-mail.

RH: Okay -- laughs.

JS: I don't use it at all.

RH: Okay, well then that, that may be a problem. Um, but here is a, a copy of an e-mail and a copy a cc: of this went to Shelia, Sheila? Billiard from Enoch Light to Enoch Light and Jim Waring; Date: Tuesday, December 19, 2006; uh Time: 4:30-5:00 p.m.; Subject: Meeting with Aaron Feldman and, and Tom Story; Re: Sunroad (Jim Waring); Place: Mayor's Office.

JS: Right.

RH: Now, the Aguirre accusation is that this date, December 19, two days before the stop work order was modified to allow uh Sunroad to complete the building, um, there was a meeting in your office with you, Tom Story, Aaron Feldman, and Jim Waring, who heads up your department. Uh, two days later the stop work order was modified and Aguirre's charge is that you modified it on behalf of a campaign contributor.

JS: Well (laughs), let me go back into that one. Uh we did have that meeting. Aaron Feldman asked to come over and explain his side of the story. Um he came over and uh said that uh he didn't want to file a lawsuit against the City. Uh he didn't want to file a lawsuit for quite a bit of money against the City, but he was feeling compelled to because uh he felt that he had done everything correctly, even though we now know that that's not the case. Uh he also felt that um it was if we couldn't winterize that building, it was going to create damage in there uh that couldn't be taken care of and if they sued us we were going to owe a lot more money for that. Um I talked with Jim Waring, we had conversations, and basically the decision was made to let the building be winterized so we could mitigate any damages in case there was a lawsuit and in case we lost. Because we lose quite a few lawsuits. Uh and I thought that the right decision was to let it be

winterized so that if we did lose the lawsuit, and we have been sued since then, uh that we were not going to have to pay as much of the damages because it simply hadn't allowed it to be destroyed on the inside.

RH: Do you think that Aaron Feldman lived up to the verbal agreement that you're now describing that he had with you?

JS: No.

RH: In what specific respect?

JS: Well, when uh they talk about winterizing, uh, you know, I I think what my expection [sic], or or my impression of winterizing is is you uh put some type of coating around the outside so that rain can't get in, so that wind can't blow in, so that all that can't happen. It certainly didn't mean putting new architectural features at that wing that's on there now. It didn't mean any of those things. And that's the mistake we made in not stopping it quickly enough.

RH: You know the um the modification of the stop work order that went out on December 21st, two days later, was signed by Marcela Escobar-Eck, who had been involved in this uh project for some time and knew exactly uh what uh was uh expected. And she said, quote, in the letter sent to Tom Story, uh in the "in the interest of saving the structure from damage which could be caused by weather, your request will be allowed for this phase of construction for the items discussed at the field meeting of December 1, with Joe Harris, subject to your concurrence with the terms of this letter." Uh, unquote. Do you think Marcela Escobar-Eck would follow this project very minutely? Tom Story who was aware of this project very minutely. Um, that they understood that the weatherization part of this uh thing would be basically be the construction of the top two stories.

JS: You, you know I don't know what Marcela understood. I I just don't know that answer.

RH: You haven't asked her?

JS: No I haven't asked that specific question.

RH: Do you know that in your bureaucracy there's somebody who's supposed to, that actually is designated by your procedures and state law, to sign uh, because it's a pretty serious matter. You know, stopping work. A stop work order is a pretty serious matter. And there's actually a building official that's designated to do that.

JS: Right.

RH: It's not Marcela.

JS: (Mayor did not respond)

RH: I mean, and and and and Waring had to change the the policy in your department because the guy who was supposed to do it, the guy who was actually uh under the policies and the state law required to do it, in terms of modifying any stop work order, refused to do it.

JS: You know, we talked about that issue this afternoon and I I I don't, I'm not sure that's exactly right.

RH: What is exactly right?

JS: Well, my understanding is Marcela asked him if he wanted to do it, if we was willing to do it, and he said no.

RH: And he's the officer that's supposed to do it.

JS: Well, I'm not, I I I don't know that [sic] answer to that. Um...

RH: But it's an important point.

JS: Well, it it's an important point and that's the reason I'm not going to commit to something I don't know the answer to.

RH: Okay.

JS: Uh, I do know she said if you don't want to do it, then I'll do it myself. And that's what she did.

RH: Uh, this particular building official who was designated to issue stop work orders and any amendments to them, any changes to them, refused to do it, wouldn't allow his deputies to do it, and Marcela did tell him, as I understand it, Okay, then I'll do it. Uh she....

JS: And and I understand it differently, but that's....

RH: What... how do, how do you under, I'd like to know how you understand the....

JS: I understand that she went to him and asked him if he was willing to do it and he said no. And she said alright, I'll do it. She didn't try to put the pressure on him to do it, knowing that it was a political situation.

RH: Did she have the authority?

JS: I I don't know that answer. That's what I told you, Roger.

RH: Okay. So I just wanted to make that clear that a stop work order modification went out, not from the person that would normally do it, because Marcela went and asked him to do it in the first place. Right?

JS: Yeah, I I just don't know that answer.

RH: Well you just told me she did.

JS: I'm telling you that she did not pressure him to do it. She said if you don't want to do it, I'll do it.

RH: In other words, in other words she went and asked him to do it.

JS: Right.

RH: And he wouldn't do it.

JS: He said he would prefer not to.

RH: Yeah, so, she went ahead and signed it, when in fact, while that was not normally done.

JS: Inaudible (both talking at same time)

RH: How many other stop work order modifications do you think Marcela signed?

JS: I I don't know. I don't even know how many we put out.

RH: Alright. I don't, I don't either. But, it was an, it was an unusual moment in your bureaucracy. Anyway, uh I I, and more importantly than that, let me get back to Ted Sexton. And I want to uh I want to ask you, now that we know a little bit more about the circumstances under which he came over from the Airport Authority, isn't it true that his responsibility at the Airport Authority is interaction with uh with the FAA and regulatory bodies?

JS: He he's an executive vice president. He has extensive interaction with the FAA and regulatory bodies.

RH: Right. So when he came over, this was part of the thing you were you were seeking is that expertise. And in fact he prepared for a meeting down in Texas of FAA officials, some a, a solution, an alternative solution to the Sunroad uh problem, right?

JS: As I said, we looked at every solution we could think of to protect public safety.

RH: And how many solutions did he present to the FAA in Texas?

JS: Uh, I'm not sure. I think he only presented one, which was the southern uh flight pattern.

RH: Okay. And he did that after consulting with you?

JS: Uh, no.

RH: Who did he consult with?

JS: I'm sure he consulted with uh our staff and all of that. I knew that he was going to present possible solutions. Uh we also presented uh having the Sunroad building down to 163 feet with uh one elevator tower in there. Uh, so we presented a range of solutions and basically the FAA came back and said uh we are willing to change the flight pattern, but we are not willing to uh allow you to uh take the building down to 163 feet with the uh elevator tower sticking up. Uh so you need to change the flight pattern, or you leave it in place like it is. And that's when I made the decision. I made the decision later uh that we're not going to change the flight pattern. Uh Sunroad's got to reduce the size of the building.

RH: Now, in terms of (laughs) reducing the size of a building, I mean, the building is there. It's at 180 feet.

JS: Right.

RH: It's twenty feet higher than uh the FAA says it should be.

JS: I agree.

RH: So, you're putting the whole thing now on a lawsuit filed by Aguirre uh after the actions of people who work for you allowed them to build a building to 180 feet.

JS: Well, yeah I am. In fact I've said we made a mistake on that building. We tried to get advice from the City Attorney's Office before it went up to the 180 feet and couldn't get it. Uh we made a mistake and let that building go up. I'm I'm relying on the City Attorney now uh to get the lawsuit in there where we have them reduce that.

RH: And he's saying, and I think this is the latest I got here, that, based on the City's actions, it undercuts the uh lawsuit because the Sunroad gets to go into court and say wait a minute, everything we did, we have all these letters from everybody at the City telling us these are things we can do.

JS: Well I don't think that's entirely true, Roger. And I'm I'm not going to quibble as things Mike's saying about undercutting. But I made it very clear and then a letter I put out on Monday of this week, I said that we were going to stick with the same flight patterns, we were going to stick with everything so that the uh lawsuit that the City is putting together would not be undercut. Um, I feel very strongly that we have a good lawsuit on that, and it's time for Mike to get into court and get that taken down.

RH: Uh, is Ted Sexton still a loan to the City?

JS: Yes.

RH: And what is he working on now?

JS: He has helped us on, as I said, uh he has helped us uh the Banker Hill issue, on the Sunroad issue in uh the harbor, uh he has helped us on, on the La Jolla Colony uh project, where we got uh, or the the developer got approval from the Marine Corps. uh to build anything to 360 feet and then FAA came in and said wait a minute, they do not speak for us. Uh and we worked it out, the developers voluntarily after working on that issue, taking the project size down. So he's worked on those, along with um, he's still working on the Brown Field and the Montgomery Field issues to my understanding.

RH: Other than the um, that southern uh flight, reorientation of the flight pattern at Montgomery, to help try to solve the Sunroad problem, did he offer any other alternatives to uh solve the problem with Sunroad, you described the one about uh leaving it at uh 163 plus the elevator and so forth, but in terms of of the actual with the FAA, was there any other alternative he developed?

JS: There was uh, I I think there still is another alternative, and it involves uh newer instruments that uh has everybody land from the east and uh, I don't know the details of that. Um, he had worked on that solution also. That's a a long term solution. But uh really what we decided was that um in order not to undercut the lawsuit and uh to keep us from rerouting traffic over residential areas, that we were going to uh keep the same uh level that we are at right now uh in terms of that level of hazard that's up there. The pilots have to fly at I think it's 960 feet instead of 880 feet. And we'll keep that in place until the Sunroad building comes down.

RH: Alright. On another topic, uh council member Donna Frye and uh Bob McElroy, the president and CEO of the Alpha Project were out at the

#

Exhibit 9

DEPARTMENT OF TRANSPORTATION

DIVISION OF AERONAUTICS – M.S.#40

1120 N STREET

P. O. BOX 942873

SACRAMENTO, CA 94273-0001

PHONE (916) 654-4959

FAX (916) 653-9531

TTY (916) 651-6827

*Flex your power!
Be energy efficient!*

January 19, 2007

Mr. James T. Waring
Deputy Chief Operating Officer
Land Use and Economic Development
Office of the Mayor
City of San Diego
202 C Street, 9th Floor
San Diego, CA 92101

Dear Mr. Waring:

The California Department of Transportation (Department), Division of Aeronautics has obtained a copy of the revised Stop Work Notice (Notice) issued by the City of San Diego (City) on December 13, 2006 for the Sunroad Centrum 1 (aka Sunroad Centrum 12) building located at 8620 Spectrum Center Boulevard. We have also reviewed a copy of the December 21, 2006 letter from Ms. Marcia Escobar-Eck of your Development Services Department to Sunroad Enterprises (Sunroad) authorizing construction of the Sunroad Centrum 1 building above the level specified in the Notice. The City's apparent failure to enforce the Notice, which enables the developer to violate State law and seems to disregard public safety, is of great concern to the Department.

In our letter of November 9, 2006, to the Development Services Department, we directly informed the City that any construction of the building above a height of 160 feet Above Ground Level (AGL) was a violation of California Public Utilities Code (PUC) Section 21659, a State law enacted to prohibit hazards near airports. As stated above, the City's December 21, 2006 letter, particularly when reviewed with respect to Sunroad's November 21, 2006, letter to the City requesting many permanent construction features under the pretense of 'weather proofing' the building, makes it difficult to regard the City's actions as anything other than an attempt to undermine State law.

Additionally, while we appreciate that you revised the Notice from halting work in the top 17 feet of the building to the top 20 feet, our review of plans approved by the City show that stopping work in the top 20 feet is still inadequate. The "20 feet" figure was based on data provided by Sunroad to the Federal Aviation Administration for a 180-foot tall building. Twenty feet was the amount the building exceeded the Federal Aviation Administration (and Department) standards, which would have allowed a building that was 160-foot tall. However, the plans approved by the City on February 10, 2006, show that the highest point of the building is approximately 602 feet Above Mean Sea Level, which translates to a true building height of 186 feet AGL. This means that the upper 26 feet of the building constitutes a hazard. As called for by our mission to protect aviation safety, people and property, we are notifying you of this fact, and request that you revise and reissue the Notice so that no work is accomplished in the top 26 feet of the Sunroad Centrum 1 building.

Mr. James T. Waring
January 19, 2007
Page 2

The City's attempts to pass liability for the illegal construction on to Sunroad entirely miss the point. This issue is not about who has liability for the hazard, but taking action to remove the hazard so that liability is not an issue. When the facts of the situation show a developer failed to comply with a federal notification regulation (Federal Aviation Regulation Part 77.17), used that violation of federal regulation to obtain local planning and building approval, knowingly began construction of a building determined by a federal agency to be a hazard, constructed parts of the building in violation of State law (PUC Section 21659), and continue to defy State and local attempts to resolve the situation, the reluctance of the City to take the necessary steps to protect its citizenry is a mystery.

As you surely know, the City Attorney of San Diego has filed a complaint against Sunroad on behalf of the City as the necessary first legal step in removing the hazard posed by the Sunroad Centrum 1 building. We ask that you rigorously enforce the Notice, and join with the City Attorney and others united in the interest of public safety, to protect the people of San Diego and local, State, and federal interests in Montgomery Field airport for which the City has obligated itself. If you have any additional questions or need further assistance, please do not hesitate to contact us at (916) 654-4565 or e-mail at jeff.brown@dot.ca.gov.

Sincerely,

Original Signed by

JEFF R. BROWN
Aviation Safety Officer

c: Carmen Brock, Deputy City Attorney, City of San Diego
Honorable Mayor Jerry Sanders
Ms. Marcela Escobar-Eck, Director, Development Service Department
San Diego City Council
FAA Western Pacific Region

Exhibit 10

RECEIVED

DEC 01 2006

Office of
The City Attorney
City of San Diego

DEVELOPMENT SERVICES

MEMORANDUM

DATE: December 1, 2006
TO: Jim Waring
FROM: City Attorney
SUBJECT: Sunroad Enterprises, Inc. Centrum I Building Stop Work Notice

This memorandum is to address the request made by Sunroad Enterprises, Inc. ("Sunroad") at the November 30, 2006 meeting with Land Use & Economic Development Department ("Department") staff and the City Attorney's Office. Specifically, Sunroad has requested the City lift the Stop Work Notice presently imposed upon Sunroad's Centrum I building near Montgomery Field to allow Sunroad to complete roof construction on the Centrum I Building. The City Attorney specifically advises the Department make no change to the status of the Stop Work Notice.

As you are aware, the City Attorney's office is currently working with the California Department of Transportation ("DOT") to undertake proceedings to abate the threat to public safety created by the height of the Sunroad Centrum I Building. At its present height of 180 feet, the building is both a public nuisance and violates the California Government Code and the State Aeronautics Act. The City Attorney's Office does not believe the mere possibility of placing a "localizer device" at Montgomery Field at some future date (provided the FAA approves), addresses the immediate and long term safety needs of the City. A mere suggestion of a possible solution to the current problem certainly does not warrant any change of status to the current Stop Work Order.

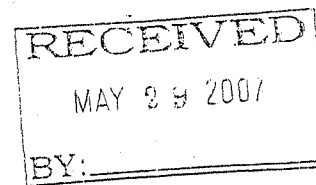
The DOT, Aeronautics Division, who is tasked with protecting people and property on the ground from the consequences of near-airport aircraft accidents, has specifically requested the Stop Work Order not only be invoked, but that the City move forward with permit revocation procedures. For all of these reasons, it is imperative that there be no change to the Stop Work Order whatsoever. Rather, Sunroad may proceed with its administrative remedies if it believes a rescission of the Stop Work Order is warranted.


Michael J. Aguirre, City Attorney

Cc: Honorable Mayor and City Council

DSD0002148

Exhibit 11



OFFICE OF THE GOVERNOR

May 25, 2007

Mr. Michael J. Aguirre
San Diego City Attorney
Office of the City Attorney
City of San Diego
1200 Third Avenue, Suite 1620
San Diego, California 92101-4178

Dear Mr. Aguirre:

Thank you for your letter of May 17, 2007. First, let me commend you on your efforts and goal of protecting the public safety of San Diegans. The Governor's Office shares your concern not only for the safety of all residents and visitors to the City of San Diego, but for public safety throughout California. Every citizen and visitor to the State of California must be assured of a safe, efficient and dependable transportation system, including our aviation transportation system.

The expertise of the Federal Aviation Administration (FAA) plays a key role in ensuring safe operations in the airspace above and around our airports. The Legislature has incorporated that expertise into the provisions of the State Aeronautics Act, which integrates aviation into our transportation system on a regional, statewide and national basis. The State Aeronautics Act is specifically intended to promote aviation safety and expressly recognizes that structures should not be constructed at a height exceeding the FAA airspace obstruction standards. While land use decisions largely rest with local and regional governments, aviation safety concerns should be addressed in those decisions, including consideration of specific concerns raised by agencies with special expertise, such as the FAA. The Legislature has provide a further "safety net" by expressly providing that projects exceeding FAA standards cannot proceed without a permit from the California Department of Transportation. No such permit has been issued. The Department has repeatedly expressed its concerns to the City and was included by your office in the pending lawsuit.

As the California Department of Transportation is a named defendant in the City's lawsuit, it not appropriate for the Governor to intervene in this matter. In your letter, you request that the Governor direct the California Attorney General to join in the City's lawsuit. As the

Mr. Michael J. Aguirre
May 25, 2007
Page 2

Attorney General is an independent constitutional officer, it is more appropriate for your office to make direct contact with the Attorney General's Office. I am certain Attorney General Edmund G. Brown Jr. will carefully consider any request for such legal assistance.

Sincerely,

A handwritten signature in cursive script, reading "Andrea Lynn Hoch".

ANDREA LYNN HOCH
Legal Affairs Secretary

Exhibit 12

Ted S.

[illegible]

MAR 08 2007

SECRET

Re: Montgomery Field - Sunroad Litigation

The City of San Diego is involved in litigation regarding a building constructed by Sunroad Enterprises near Montgomery Field. The building is already constructed to its maximum height, although interior improvements are not complete.

As Mayor, my primary concern is with the safe operation of all city facilities, including our airports. For a number of reasons, my office has unfortunately been unable to get a clear analysis of whether or not the building is a safety risk to aviation, and, if so, whether there may be changes to operations or notices that would eliminate that risk. While the lawyers say the lawsuit will result in the building being lowered, the outcome of any lawsuit is never certain, and will take many months to determine. Furthermore, the taxpayers of San Diego face an unknown level of potential liability if the building owner is required to lower the structure.

I would appreciate and am requesting that the Airport Authority assist us in analyzing the situation and in working with the FAA and other interested stakeholders in an attempt to resolve this issue. Given the Authority's staff experience in aviation and FAA matters, your help would be invaluable in providing my office with clear and dispassionate guidance and advice.

Please let me know if the Authority will help with this important effort.

Sincerely,

DL

JERRY SANDERS
Mayor

cc: Thella F. Bowens, President/CEO
San Diego County Regional Airport Authority

Exhibit 13

Ted Sexton - DRAFT Presentation on San Diego (MYF) Hazardous Obstruction Elimination

From: Ted Sexton
To: kevin.haggerty@FAA.gov; kimberly.middleton@FAA.gov
Date: 5/18/2007 1:09 PM
Subject: DRAFT Presentation on San Diego (MYF) Hazardous Obstruction Elimination

Kimberly: Thanks for the help with arrangements and here is an advance copy of the brief to Kevin. It is a final Draft, so a number or two may change but I wanted him to see the direction we're going.

We, on our end, are set pretty much on Tuesday at Meecham Airport (FAA offices) at 3:00pm to brief him, if that's still convenient.

Thanks Again

ps Angelos on White Settlement Road...ummm.

Ted

Ted Sexton - Meeting - Kevin Haggerty & MapQuest Directions

From: <Kimberly.Middleton@faa.gov>
To: <tsexton@sandiego.gov>
Date: 5/18/2007 1:11 PM
Subject: Meeting - Kevin Haggerty & MapQuest Directions

Hello, Ted,

The meeting with Kevin Haggerty will be on Tuesday, May 22, at 3:00 p.m.
The address of the meeting is 4500 Mercantile Plaza Drive, Suite 108, Fort Worth, TX 76137.

The MapQuest directions follow below. Feel free to call me if you have any questions.

Have a great weekend!
Kimberly Middleton
Aeronautical Information Management
(202) 267-9400
800 Independence Ave., SW
Washington, D.C. 20591

----- Forwarded by Kimberly Middleton/AWA/FAA on 05/18/2007 04:00 PM -----

Kimberly
Middleton/AWA/FAA@FAA

To Kimberly Middleton/AWA/FAA@FAA
cc

05/18/2007 04:00 PM

Subject MapQuest Directions

From: Dallas-Fort Worth International Airport (DFW) 1530 W 18th St Dallas,
TX 75261 US
To: 4500 Mercantile Plaza Dr Fort Worth, TX 76137-4229 US

Driving Directions

1. Start out going SOUTH on INTERNATIONAL PKWY S/TX-97 SPUR S (Portions toll). (3.36 miles)
2. Take the TX-183 W/TX-360 S ramp toward FT WORTH/ARLINGTON. (0.70 miles)
3. Merge onto TX-183 W toward FT WORTH. (8.88 miles)
4. Take the I-820 W exit. (0.89 miles)
5. Merge onto I-820 N. (5.57 miles)
6. Merge onto I-35W S/US-287 S/US-81 S via EXIT 16B on the LEFT toward FT WORTH. (0.98 miles)
7. Take EXIT 56A toward MEACHAM BLVD. (0.13 miles)
8. Turn SLIGHT LEFT onto N FREEWAY/NORTH FWY W. (0.09 miles)
9. Turn LEFT onto MEACHAM BLVD. (0.14 miles)
10. Turn SLIGHT RIGHT onto MERCANTILE PLAZA DR. (0.24 miles)
11. End at 4500 Mercantile Plaza Dr Fort Worth, TX 76137-4229 US

Total Estimated Time: 25 minutes

Total Distance: 20.98 miles

To view your driving directions, click on this link:

[Driving Directions](#)

[MapQuest](#): Where to go, how to get there!

Ted Sexton - Re: Drawings

From: "Thomas Kamman" <tskamman@sbcglobal.net>
To: "Ted Sexton" <tsexton@sandiego.gov>
Date: 5/19/2007 6:59 AM
Subject: Re: Drawings

Here's the drawings and I do have your presentation. I should have it reviewed shortly.

Ted Sexton <tsexton@sandiego.gov> wrote:

OK, no problem. Hope you got my presentation

Ted

>>> <tskamman@sbcglobal.net> 5/18/2007 3:03 PM >>>

I have some data from Sunroad but can't review it on my Blackberry.

Will send to you tonight.

Sent via BlackBerry from Cingular Wireless

Williams Aviation Consultants, Inc.

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Our Consultants

Each of our consultants monitors aviation activity and initiatives throughout the Western-Pacific Region, the country's major airports, FAA Headquarters and Capitol Hill.

Carol A. Williams

Carol Williams left the Federal Aviation Administration after 25 years of service. She has served in disciplines including Flight Standards, Air Traffic, Airway Facilities and the FAA Technical Center in Phoenix. She is experienced in areas of test administration, large program management, information system administration, contract negotiation and EEO and Affirmative Action. Ms. Williams has worked in the US Military Assistance Group, Korea, Department of Interior Geological Survey and private industry and now serves as the President of two aviation consulting companies based in Phoenix, AZ.

[View Resume...](#)

George D. Williams

Mr. Williams began his aviation career as an air traffic controller in the USAF. After completing his military service, he joined the Federal Aviation Administration (FAA) as an air traffic controller at Chicago O'Hare. He served as an air traffic controller in several of the Nation's busiest airports before becoming an instructor at the FAA Academy in Oklahoma City. Mr. Williams held managerial and supervisory positions in several large facilities which included both terminal and en-route air traffic control facilities.

Mr. Williams served as a Division Manager at the FAA's Technical Center in New Jersey where he was responsible for terminal and en-route automation development programs. He also served as the Director of the En Route Engineering Division which provided software and hardware support to en-route air traffic facilities and the development of various air traffic control systems.

After being appointed to the Senior Executive Service, Mr. Williams served as the Air Traffic Division Chief for the Western-Pacific Region which encompassed all air traffic operations in Arizona, California, Nevada, and a large portion of the Pacific Ocean.

Upon retirement, Mr. Williams gained airline operations experience as the Director of Air Traffic and Director of Systems Operations for one of the large airlines before forming his own consulting company.

[View Resume...](#)

Thomas S. Kamman

Mr. Kamman has been a partner and Vice-President of Operations in Williams Aviation Consultants, Inc. since the inception of the company.

Prior to his retirement after more than thirty years of service from the FAA, Mr. Kamman held various

and managerial positions in the Western-Pacific Region. He has supervised and conducted airspace for all facilities within the Western-Pacific Region which included California, Nevada, Arizona, Hawaii, and Pacific Islands. Tasks included in the design reviews included capacity modeling, demand and efficiency traffic simulation and the testing of conceptual designs for proposed facilities, Environmental Review screening, Environmental Impact Statements, Environmental Impact Reviews and Environmental Assessments. He represented the FAA in customer meetings to discuss and negotiate environmental impacts and mitigation.

Mr. Kamman also supervised all regional airspace analysis projects, airspace design changes and project modifications taking place within the Region in order to ensure compliance with National and Regional policies and directives. He served as the Region's expert on airspace and airspace development issues, including efficiency, and airport demand and capacity analysis.

He also served as the Manager of Air Traffic operations at San Diego Lindbergh (SAN), San Diego Edwards (SEE), Montgomery (MYF), and Palomar (CRQ) airports. During his career he also held positions at CA and FAA Regional Headquarters, Los Angeles, CA, and Manager for Plans, Procedures and Automation at San Diego TRACON.

[View Resume...](#)

Barry Yurtis

As an aviation consultant Mr. Yurtis has had over 34 years of aviation experience. This includes over 20 years of traffic control experience obtained as an Air Traffic Controller, Staff Specialist, Supervisor, Facility I, and Branch Manager with the Federal Aviation Administration (FAA). He has substantial experience in both military and civilian aviation as a civilian commercial pilot and flight instructor, and as a U.S. Marine Corps Naval Aviator. His traffic control experience includes radar and non-radar training and certifications in Air Route Traffic Control Centers (ARTCC), with specific controller experience gained at Memphis ARTCC and Los Angeles ARTCC. He has broad staff experience in quality assurance, airspace, procedures, and military operations at FAA and regional headquarters.

[View Resume...](#)

Dorota Skrzypek

Ms. Skrzypek graduated Magna cum Laude from Southern Illinois University with a Bachelor of Science in Aviation Management. She has extensive development, analyzing, and planning skills for both technical and the Aviation Industry. Ms. Skrzypek helped develop various airport master plans, as well as a high level plan for the Central African COMESA countries. Ms. Skrzypek also holds pilot certificates and ratings for FAA Instrument, Commercial, and Multi-Engine Land.

[View Resume...](#)

Jeremy P. Knaggs

Mr. Knaggs recently graduated from Arizona State University with a Bachelor of Science in Aviation Technology and chose this field because he has always had great interest in the aviation industry. He has a strong math and science background as well as an in depth knowledge of computer systems and software and overall project management skills.

Mr. Knaggs administers the Airspace Analysis Software used to determine the impact of structures on the Airspace System. This software includes Airspace v9, Airspace Survey, TERPS, Jeppesen Instrumental and Topographic Maps. He also uses his knowledge of instrument approach procedures and approach analysis to analyze potential obstructions in and around the airport area.

Williams Aviation Consultants, Inc.

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Us

Our Clients

G & C Aviation Consulting was founded in 1998 and focused its operation in the State of Arizona. Williams Aviation Consultants, Inc. was established to conduct business outside of Arizona.

G & C has now merged with Williams Aviation Consultants and continues to provide advice and counsel to companies, cities, government agencies, airports, coalitions, individuals and special interest groups on complex technical and regulatory aviation issues. These clients include:

Airspace and Obstruction Analysis

Consultant tasks included preparation of an FAR Part 77 - Airspace and Obstruction Analysis, Terminal Procedures (TERPS) Analysis, FAR Part 150 Noise Analysis, review and analysis of Airport Land Use requirements, preparation and submission of FAA Forms, tracking the FAA review process and providing with an in depth written summary report and complete written technical analysis of FAR Part 77 analysis. Clients included:

- ALBS Wireless
- Center for the Arts, Tempe, AZ
- Cingular Wireless, IL
- City of Apache Junction, AZ
- City of Glendale, AZ
- Clark Management & Development LLC, AZ
- Cornerstone Communities, The Terraces at Silverhawk, CA
- Ehline Company, CA
- First Industrial Realty Trust
- Hartsoe, Mark - Attorney at Law, TN
- Gallagher and Kennedy, Attorneys at Law, AZ
- Lennar Communities, CA
- Lone Tree Investments, LLC, AZ
- Master Craft Homes, CA
- Metro Commercial Properties, AZ
- NAMWEST, Riverwinds Project, Deptford Township, NJ
- NAMWEST, Town Lake Project, AZ
- Pulte Homes, CA
- Sycamore Landfill, LLC, CA
- Tempe Land Company, AZ
- Vertical City of the Americas, FL
- Wubbels & Duffey, CA

Barbara Lichman, Attorney at Law, Costa Mesa, CA.

Williams Aviation Consultants were retained for the following projects:

- Brown Field, San Diego ALUC Analysis
- City of Foster City, CA
- City of Hermosa Beach, CA
- City of Del Mar, CA
- City of Olmsted Falls, Ohio
- Orange County Regional Airport Authority (OCRAA)
- Pardee Construction Company, San Diego, CA
- South Bay City Councils of Government, Los Angeles, CA
- City of Englewood, CA
- Haden Property Impacts, AR
- North Las Vegas Airport Aircraft Accident

Bay Conservation and Development Commission (BCDC) San Francisco, CA

Performed a detailed analysis of the San Francisco Airport's plans for runway expansion into the Bay. Provided status briefing to the public, press and special interest groups as well as to the BCDC board members. Provided technical expertise to a Technology Panel established to review air traffic control, airspace and technology that will reduce delays and improve capacity at the San Francisco International Airport, CA. Multiple

Butler Township, Dayton, OH

Reviewed the Master Plans for Dayton International Airport and recommended mitigation measures for aircraft arrival and departure over-flight. Reviewed proposed runway alignment options, provided recommendations and rationale for ranking and reviewed input from other cities in the area regarding their assessment and recommendations.

Center for the Arts, Tempe, AZ

Performed an analysis of airspace and obstruction criteria for a cultural center to be built near an airport. Prepared a complete obstruction analysis and prepared the submission for review by the FAA.

Chubb Insurance

Federal Insurance - Reconstructed the operations of a large airline for approximately eighteen months to determine the impacts of a business interruption claim. Developed a program that tracked cancellations and projected costs.

City of Apache Junction, AZ

Prepared an evaluation of the impacts of major airspace and route changes in the Phoenix area. Won and secured FAA approval for a public use helicopter landing area within the City government complex. Developed the Maricopa Association of Governments (MAG) Phoenix Area Regional Airspace System Plan (RASP).

Ted Sexton - Re: Drawings

From: "Thomas Kamman" <tskamman@sbcglobal.net>
To: "Ted Sexton" <tsexton@sandiego.gov>
Date: 5/19/2007 6:59 AM
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>>> <tskamman@sbcglobal.net> 5/18/2007 3:03 PM >>>

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Sent via BlackBerry from Cingular Wireless



Williams Aviation Consultants, Inc

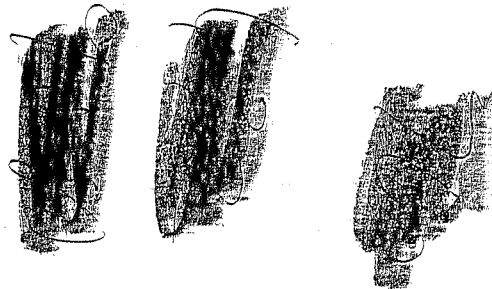
Executive Summary

Williams Aviation Consultants, Inc. has been retained to study options which would balance issues of safety and building development opportunities north of the Montgomery Field Airport in San Diego, California. Particularly, this preliminary study examined the feasibility of installing an Instrument Landing System (ILS) and adjusting the Visual Flight paths at Montgomery Field Airport as measures to maintain the current safe environment and increase the options available to pilots flying in instrument conditions, while allowing for taller structures to be constructed north of the airport.

New structures north of Montgomery Field that exceed 580' Above Mean Sea Level (AMSL), or about 160' Above Ground Level (AGL), will receive a hazard determination from the Federal Aviation Administration (FAA) because new structures north of Montgomery Field are restricted from penetrating a 300' buffer that separates ground objects from aircraft using the circle-to-land instrument procedure. Also, any structure that exceeds 577' AMSL will exceed the Visual Flight Rule (VFR) Horizontal Surface which extends 10,000' around the airport. Penetration of this surface does not necessarily mean that the structure will be a hazard to air navigation, but rather that an aeronautical study must be completed to determine if it will have a substantial adverse affect on VFR traffic. This document examines how the aforementioned restrictions could be overcome while maintaining the safety and capacity of the airport.

A new Instrument Approach Procedure (IAP) to Runway 10L could be a measure used in eliminating the need for an aircraft to use the current circle-to-land procedure north of the 5/23 extended runway centerline. Installing an ILS on Runway 10L will also allow aircraft to land to the east without having to circle around the airport at lower altitudes. Slightly adjusting the VFR traffic patterns could keep all traffic clear of taller buildings during visual flight conditions.

Williams Aviation Consultants has completed a preliminary feasibility study of installing an ILS at Montgomery Field. The study considered the FAA requirements to install an ILS and evaluated its reasonableness to be used an alterative to the circle-to-land procedure. Williams Aviation Consultants has also made recommendations on what adjustments could be made to the VFR traffic pattern should such adjustments be necessary.



New Instrument Procedures

There are numerous options available in choosing what type of instrument approach procedure to implement at an airport. Some variables that need to be considered include: what types of equipment does the average aircraft using the airport have, what additional equipment will be required at the airport, obstructions in the area that will affect minimum descent altitudes, availability of land to install new equipment, local weather conditions, and the effect on existing traffic patterns. Based on these variables an airport operator may decide to use one or more of the following types of procedures:

- a. **Precision Approach.** An instrument approach procedure providing course and vertical path.
 - b. **Approach Procedure with Vertical Guidance (APV).** An instrument approach procedure providing course and vertical path guidance that does not conform to precision system performance standards.
 - c. **Non-precision Approach.** An instrument approach procedure providing course guidance without vertical path guidance.
-

Williams Aviation Consultants has explored the feasibility of installing a ground based precision approach system that would give pilots precision lateral and vertical guidance information. Most aircraft, that are certified to operate in instrument conditions, are equipped with the equipment necessary to utilize this type of procedure, which is often called an ILS approach. An ILS approach procedure could also provide pilots with the lowest possible minimum descent altitudes when instrument conditions exist. Also, due to the high accuracy of the ILS procedure, existing obstacles in the area would not significantly increase the minimum descent altitudes. An ILS procedure also allows pilots to use only the lateral guidance portion of the approach if the vertical guidance antenna becomes temporarily inoperative, which is extremely rare given the ILS' outstanding maintenance record.

New Instrument Procedure Process and Requirements

Any Party with an aeronautical interest may submit a request for an instrument approach procedure. The process for establishing a new instrument procedure requires coordination between the FAA and the airport owner and/or airport management. If the airport has an airport layout plan, it may be necessary to update it so as to include the new instrument procedure, however, some adjustments to current procedures may not require the ALP be updated

According to the San Diego Airport Land Use Commission, the addition of a non-precision approach to Runway 10L has already been recommended in the DRAFT Airport Master Plan Update.

The request for a new instrument procedure is made to the Regional Flight Procedures Office, who will coordinate the request with Flight Standards, Airway Facilities, Air Traffic, and Airports Offices whose participants will comprise the Regional Procedures Team (RPT). The RPT will next request specific airport data such as a copy of the ALP, on-airport equipment and facilities, and environmental data.

Approach Lighting is a requirement that can not be met for installing an LAP to Runway 10L. A typical approach lighting system is over 2,000' in length. Montgomery Field Airport only has about 800' of usable land west of Runway 10L. Therefore, in order to meet FAA requirements, an ILS procedure will require at least $\frac{3}{4}$ mile visibility if vertical guidance is provided and at least 1 mile visibility if vertical guidance is not provided. The current circle-to-land procedure also requires at least one mile of visibility, therefore, the absence of approach lights does not make a new instrument procedure less advantageous than the current procedures. Approach visibility requirements would be 25% less than the current circling procedure if vertical guidance is provided.

The proposal will then be submitted to the appropriate Flight Procedures Office for processing. Next, a study will be conducted to determine the flight procedure's feasibility. If the flight procedure is based on an existing navigational aid, such as a Very high frequency Omni directional Range (VOR), Non-Directional Beacon (NDB), or GPS, the participating Air Traffic Office will be responsible for public notification. If the procedure requires no airspace modifications, a non-rulemaking circularization will likely be accomplished. Once completed, the RPT will issue their approval and forward the formal instrument flight procedure package to the National Flight Procedures Office (NFPO).

A new procedure could be based on new and existing navigational aids. A new localizer and vertical navigation system may need to be installed, while utilizing at least one other VOR in the San Diego area to provide the pilot with the ability to triangulate position in relation to the airport. As the FAA develops the final Instrument Approach Procedure changes may need to be made to current air traffic control procedures around the airport.

A NFPO specialist will review the layout and design of the procedure and coordinate these findings with the controlling air traffic facility. The instrument approach will then be designed using the applicable Terminal Instrument Procedures (TERPS) criteria. Any airspace actions and safety considerations will be studied as necessary.

A Terminal Instrument Procedures (TERPS) analysis was completed for a precision ILS procedure as well as a non precision localizer procedure. The technical data for this analysis is contained in a later section of this report. The analysis revealed that with a standard 3 degree glide slope and 4.5 nautical mile final approach course, pilots could safely descend to an altitude of 635' AMSL. The current circle to land procedure allows pilots to descend to 880' AMSL; therefore, an aircraft could safely descend 245' lower with the new ILS system than what the current procedure allows.

The procedure will then be evaluated by Quality Control. After being finalized it will be tested via a flight check. During the flight check, criteria such as signal availability, integrity, and accuracy are all validated. Once the procedure has passed this test, the instrument flight procedure is forwarded for publication.

VFR Traffic Pattern

There are many variables that influence the establishment of airport arrival and departure flows. Structures in the traffic pattern airspace may adversely affect air navigation by being a physical obstruction to air navigation or by distracting a pilot's attention during a critical phase of flight. The categories of aircraft using the airport determine airport traffic airspace dimensions.

Structures which exceed 577' AMSL and that are within 10,000' of the Montgomery Field runways would exceed the VFR horizontal surface, and therefore could possibly have an adverse affect on VFR traffic using the airport. It would be possible to avoid any VFR traffic conflicts by requiring aircraft in the traffic pattern to make either their base or crosswind turns west of Highway 163. Pilots would need to be made aware of these requirements in such publications as the Airport Facility Directory and by announcing them on the Automated Terminal Information Service (ATIS).

Consultants Conclusion:

The addition of an Instrument Approach Procedure to Montgomery Field Airport would be a viable option in order to eliminate the need for aircraft to use the circle-to-land procedure north of the Runway 5/23 extended centerline. Implementation of an Instrument Landing System on Runway 10L would provide pilots with a reasonable option to use when instrument conditions exist and when winds are such that landing to the west is not practical. The addition of a precision instrument approach procedure would allow pilots to descend up to 245' lower than what they could using the current circle-to-land procedures.

The addition of an instrument approach procedure to Runway 10L would keep pilots from needing to circle north of extended Runway 5/23 centerline during instrument conditions. By including a restriction of not authorizing circling north of the 5/23 Runway centerlines when using the current ILS procedure, new structures north of the airport that exceed 580' AMSL would not be out of compliance with FAA Terminal Instrument Procedures (TERPS) while still allowing pilots to land on any of the runways during instrument conditions.

A precision instrument procedure could allow approaches as low as 635' AMSL when visibility is 3/4 of a statute mile. The non precision "localizer" approach could allow approaches as low as 730' AMSL when visibility is 1 statute mile.

Structures which exceed 577' AMSL and that are within 10,000' of the Montgomery Field runways would exceed the VFR horizontal surface, and therefore could possibly have an adverse affect on VFR traffic using the airport. It would be possible to avoid any VFR traffic conflicts by requiring aircraft in the traffic pattern to make either their base or crosswind turns west of Highway 163. Pilots would need to be made aware of these requirements in such publications as the Airport Facility Directory and by announcing them on the Automated Terminal Information Service (ATIS).

The installation of an Instrument Landing System is a feasible option to allow for increased development north of Montgomery Field. Installing this type of system would allow all the runways to be used during instrument conditions while actually increasing the options for pilots. The development and installation of a new ILS at Montgomery Field would provide a precision, rather than non-precision approach to Runway 10L. This would improve access to the airport by facilitating a lower minimum descent altitude than what is currently available with the circling approach to Runway 10L. Additionally, the development of a localizer, or non-precision approach to Runway 10L would also provide improved access over the current circling approach, although not to as great an extent as an ILS. By not authorizing aircraft to circle north of the 5/23 extended runway centerline the buildings north of airport would be in compliance with TERPS. Also, by adjusting the traffic pattern the new buildings would not be in conflict with the VFR traffic using the airport.

Consultant Feasibility Study

Williams Aviation Consultants, Inc. has been retained to study options which would balance issues of safety and building development opportunities north of the Montgomery Field Airport in San Diego, California. (Figure 1) Particularly, this preliminary study examined the feasibility of installing an Instrument Landing System (ILS) and adjusting the Visual Flight paths at Montgomery Field Airport as measures to maintain the current safe environment and increase the options available to pilots flying in instrument conditions, while allowing for taller structures to be constructed north of the airport.



Figure 1

New structures north of Montgomery Field that exceed 580' Above Mean Sea Level (AMSL), or about 160' Above Ground Level (AGL), will receive a hazard determination from the Federal Aviation Administration (FAA) because new structures north of Montgomery Field are restricted from penetrating a 300' buffer that separates ground objects from aircraft using the circle-to-land instrument procedure. Also, any structure that exceeds 577' AMSL will exceed the Visual Flight Rule (VFR) Horizontal Surface which extends 10,000' around the airport. Penetration of this

surface does not necessarily mean that the structure will be a hazard to air navigation, but rather that an aeronautical study must be completed to determine if it will have a substantial adverse affect on VFR traffic. This document examines how the aforementioned restrictions could be overcome while maintaining the safety and capacity of the airport.

Montgomery Airport Overview

Montgomery Field is located approximately 8 miles northeast of San Diego, California at an elevation of 427 feet. The Airport had about 245,000 aircraft operations in 2005 and has 554 based aircraft. The Airport property covers approximately 550 acres and it is close to Highway 163. It is surrounded by a mix of residential, commercial office, and light industrial complexes. The airport also has its own weather and meteorological station.

Runway 10L/28R is 4,577 feet by 150 feet and is made of asphalt/rubberized friction seal coat. Runway 10R/28L is 3401 feet by 60 feet and is constructed the same as Runway 10L/28R. Runway 5/23 is 3400 feet by 150 feet and is made of asphalt. Runways 10L/28R both have a 4 box visual approach slope indicator (VASI) with a 3.00 degree glide slope.

The runway markings for Runway 10L are non precision, the runway markings for Runway 28R are precision and the markings for Runway 10R/28L and Runway 5/23 are basic.

Current Procedures

Montgomery Field Airport has three published instrument procedures to Runway 28R, all of which contain a circle-to-land option. The circle-to-land procedure requires a pilot to follow the published "straight in" approach until visual contact with the airport can be made. The pilot can then visually position the aircraft on final approach to the runway intended for landing. **Figure 2** and **Figure 3** show the Jeppesen approach plates for the ILS and GPS/NDB approaches to Runway 28R.

Figure 4 contains the general direction of the flight paths which an aircraft currently may fly when executing an instrument approach to Montgomery Field. The area in which an aircraft is guaranteed separation from obstructions is shown by the green circular zone.

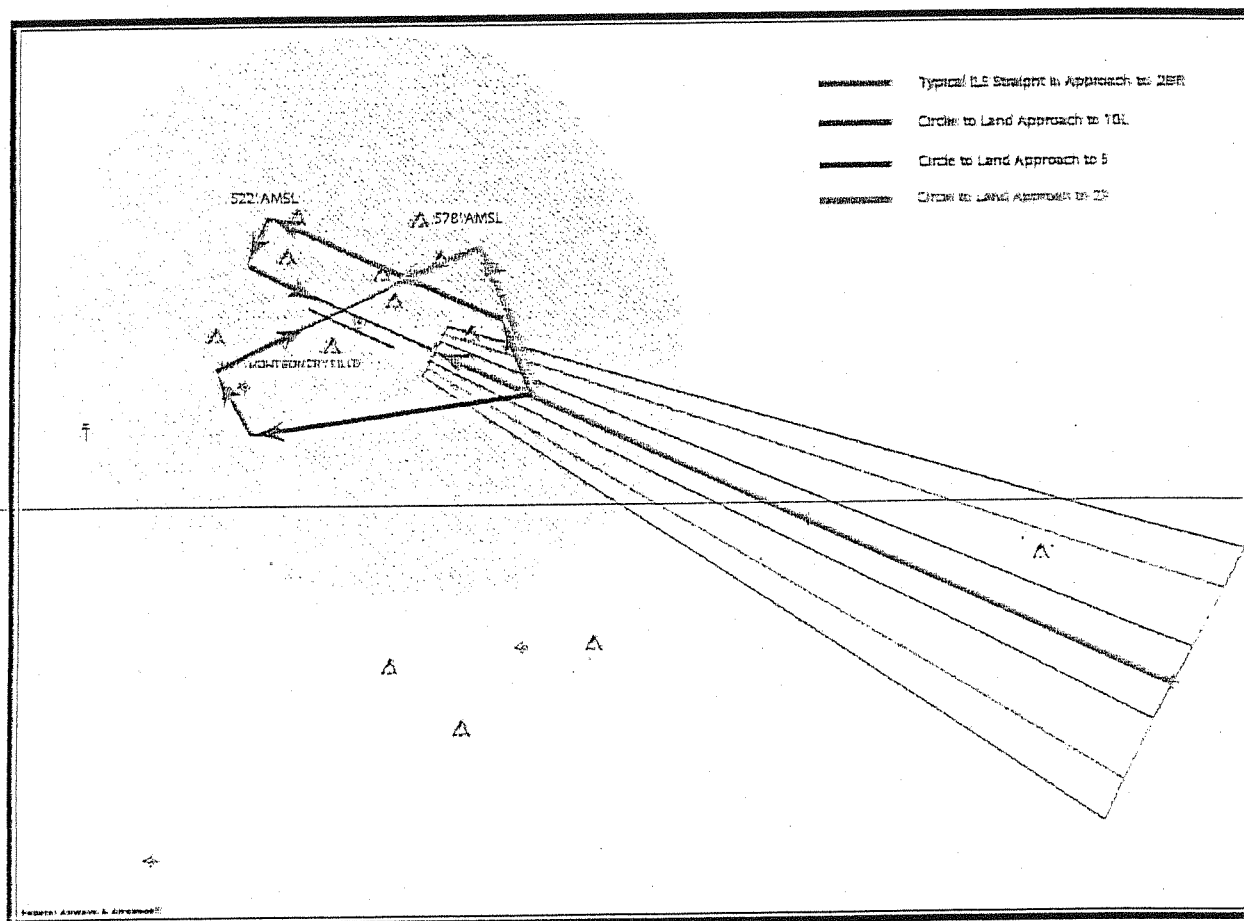


Figure 4

The controlling obstruction for these circle-to-land approach procedures is a tank located north east of the airport which is 578' AMSL. A circling approach procedure ensures that pilots will be vertically separated from obstructions in the area by 300'; therefore a pilot can descend to 880' AMSL when utilizing the "circle-to-land" portion of this procedure. The procedure also requires that the visibility at the airport be at least 1 mile.

New Instrument Procedure Creation

Federal Guidelines

To be authorized a new instrument approach procedure; the runway must have an instrument runway designation. Instrument runways are runway end specific. The runway end designation is based on the findings of an Airport Airspace Analysis. In addition, the instrument runway designation for the desired minimums must be depicted on the FAA-approved Airport Layout Plan (ALP). If not depicted, a change to the ALP is required. As part of the ALP approval process, the FAA will conduct an Airport Airspace Analysis study to determine the runway's acceptability for the desired minimums.

The airport landing surface must meet the standards specific to each type of approach, for each specified runway, direction and have adequate airspace to support the instrument approach procedure. When requesting an instrument procedure, the sponsor must specify the runway direction, the desired approach minimums, whether circling approach procedures are desired, and the survey needed to support the procedure. For all obligated National Plan of Integrated Airport Systems (NPIAS) airports, the sponsor must also provide a copy of the FAA-approved ALP showing the instrument procedure(s) requested.

Figure 5 contains the airport requirements for a Precision approach and Figure 6 contains the requirements for a Non-Precision approach. The figures also show whether the Runway 10L already meets the specified requirements, whether a change will be required in order to meet the requirement, or whether it would not be possible to meet the requirement.

Precision Instrument Approach Requirements		
Visibility Minimums	<3/4 statute mile	<1- statute mile
TERPS Glide path Qualification Surface	Clear	Clear
TERPS precision "W" surfaces	Clear	Clear
TERPS paragraph 251	3-1 Clear	20-1 Clear
Precision obstacle Free Zone (POFZ) 200x800	Required	Not Required
Airport Layout Plan	Required	Required
Minimum Runway Length	4,200 ft	4,200 ft
Runway Markings	Precision	Non precision
Holding Positions Signs and Markings	Precision	Non precision
Runway Edge Lights	HIRL/MRLL	HIRL/MRLL
Parallel Taxiway	Required	Required
Approach Lights	HALS or MALSF or MALSF	Recommended
Runway Design Standards; e.g., Obstacle Free Zone (OFZ)	<3/4 statute mile approach visibility minimums	≥ 3/4 statute mile approach visibility minimums
Threshold Siting Criteria to be Met	Clear	Clear
Survey Required for Lowest Minima	Required	Required
Requirements met Requirements must be met Requirements will be met		

Figure 5

Non Precision Approach Requirements					
Visibility Minimums	<3/4 statute mile	<1 statute mile	1+ statute mile	>1 statute mile	Circling
TERPS paragraph 251	3/4 statute mile	1 statute mile	1 statute mile	1 statute mile	1 statute mile
Airport Layout Plan	Required	Required	Required	Required	N/A
Minimum Runway Length	1200 ft	1000 ft	800 ft	600 ft	3/200
Runway Markings	Precision	Non-Precision	Non-Precision	Non-Precision	Visual
Holding Positions Signs and Markings	Precision	Non-Precision	Non-Precision	Non-Precision	Visual
Runway Edge Lights	HPV, VRL	HPV, VRL	HPV, VRL	HPV, VRL	HPV, VRL
Parallel Taxiway	Required	Required	Required	Required	Required
Approach Lights	Required	Required	Recommended	Recommended	N/A
Runway Design Standards; e.g., Obstacle Free Zone (OFZ)	3/4 statute mile approach visibility minimums	3/4 statute mile approach visibility minimums	1 statute mile approach visibility minimums	1 statute mile approach visibility minimums	N/A
Threshold Siting Criteria to be Met	Clear	Clear	Clear	Clear	Clear
Survey Required for Lowest Minima	Required	Required	Required	Required	Required
Requirements must be met					
Requirements must be met					

Figure 6

Figure 5 and Figure 6 show that the installation of Approach Lights is a requirement that can not be met for this runway. A typical approach lighting system is over 2,000 ft in length. Montgomery Field Airport only has about 800 ft of usable land west of Runway 10L. Therefore, in order to meet FAA requirements, an ILS procedure will require at least 3/4 mile visibility if vertical guidance is provided and at least 1 mile visibility if vertical guidance is not provided.

ILS Approach Options

There are various options available in choosing what type of instrument approach procedure to use at Montgomery Airport. The various options would require different equipment which could already be available to the airport.

Montgomery Field Airport currently has an ILS which uses a localizer to provide lateral guidance and a glide slope antenna to provide vertical position information. A new localizer back course procedure may be able to utilize the existing localizer and provide aircraft landing to the east with lateral position data. This type of procedure would not have vertical navigation and would require at least one mile visibility.

The localizer back course may not be feasible because the current localizer will require adjustments to provide the lateral information to aircraft landing on the other end of the runway. Depending on its capabilities it may not be possible to reconfigure the current localizer. This type of approach would allow pilots to descend as low as 730' AMSL before having to execute a missed approach.

It is also possible to create a non precision approach by installing a new localizer to provide lateral navigation. This approach would provide the same weather minimums as the localizer back course. This approach would not require the purchase of a glide slope antenna.

A precision approach procedure would require the purchase of both a new localizer and glide slope antenna. The addition of vertical guidance would allow approaches to be completed with at least $\frac{3}{4}$ mile visibility and allow pilots to descend as low as 635' AMSL before executing a missed approach.

Approach Design

An instrument approach procedure may have four separate segments. They are the initial, intermediate, final, and missed approach segments. An approach segment begins and ends at the plotted position of a fix; however, under some circumstances certain segments may begin at specified points where no fixes are available. The fixes are named to coincide with the associated segment. For example, the intermediate segment begins at the intermediate fix (IF) and ends at the final approach fix (FAF). When the final approach has been determined, the other segments should be blended with it to produce an orderly maneuvering pattern, which is responsive to the local traffic flow. Consideration must also be given to any accompanying controlled airspace requirements in order to conserve airspace to the extent it is feasible. (Figure 7)

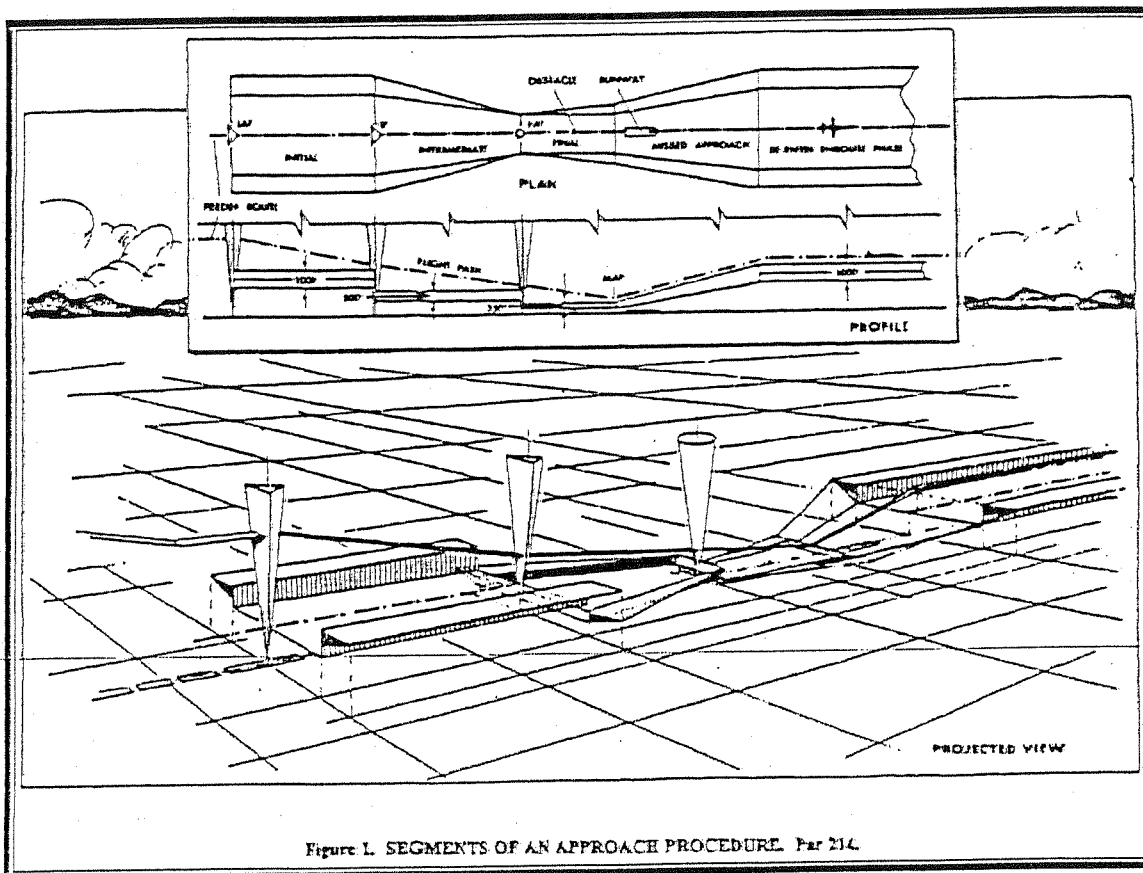


Figure 7

The FAA would ultimately create the segments associated with an instrument approach procedure to Runway 10L at Montgomery Field. Williams Aviation Consultants has completed an initial study of the final approach segment for an approach to Runway 10L in order to conclude whether the minimum descent altitudes and visibility minimums will provide pilots with a reasonable alternative to the current circle-to-land procedure.

Terminal Instrument Procedures

The achievable minimum descent altitudes are largely based on obstacles which exist in final approach portion of the procedure. Non-precision approaches are designed to give a pilot at least 250' of obstacle clearance. A precision approach provides vertical guidance and therefore, lower minimum descent altitudes are possible because an aircraft descends at uniform glide slope. In order to determine what the minimum descent altitudes for each type of approach will be, a TERPS analysis must be completed for existing obstructions in the protected areas of the approach.

Non Precision Procedure

Only the portion of the final approach area that is between the final approach fix and the runway need be considered as the final approach segment for obstacle clearance purposes. The optimum length of the final approach segment is 5 miles. The MINIMUM length of the final approach segment shall be sufficient to provide adequate distance for an aircraft to make the required descent. The area shall be centered on the final approach course and shall commence at the runway threshold. The minimum required obstacle clearance in the final approach area is 250 feet. In addition, the minimum descent altitude established for the final approach area shall assure that no obstacles penetrate the 7:1 transitional surfaces. (Figure 8)

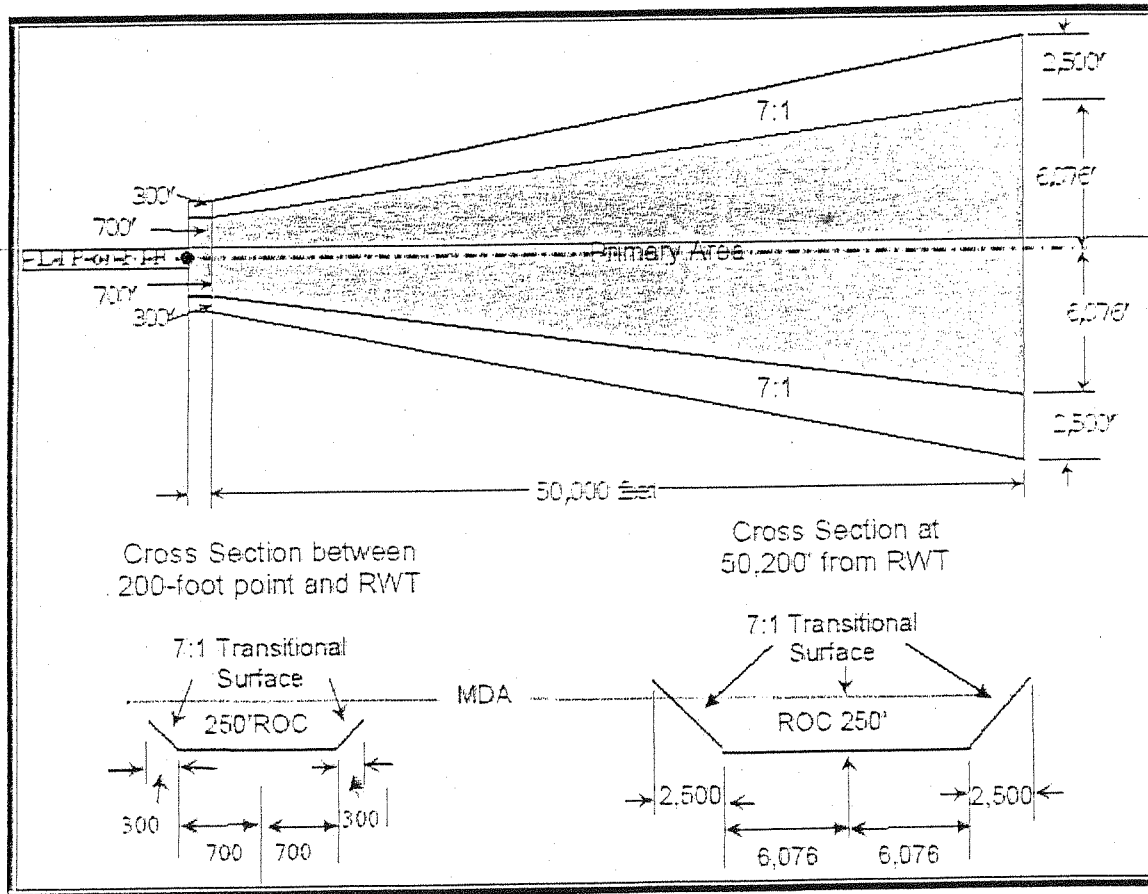


Figure 8

Figure 9 shows the final approach course which is 4.5 Nautical Miles in length. The figure also shows any obstructions that exist in the primary and secondary protected areas which must be taken into account when determining the minimum descent altitude for this non precision approach. The primary area is shown in red while the secondary area is shown in green.

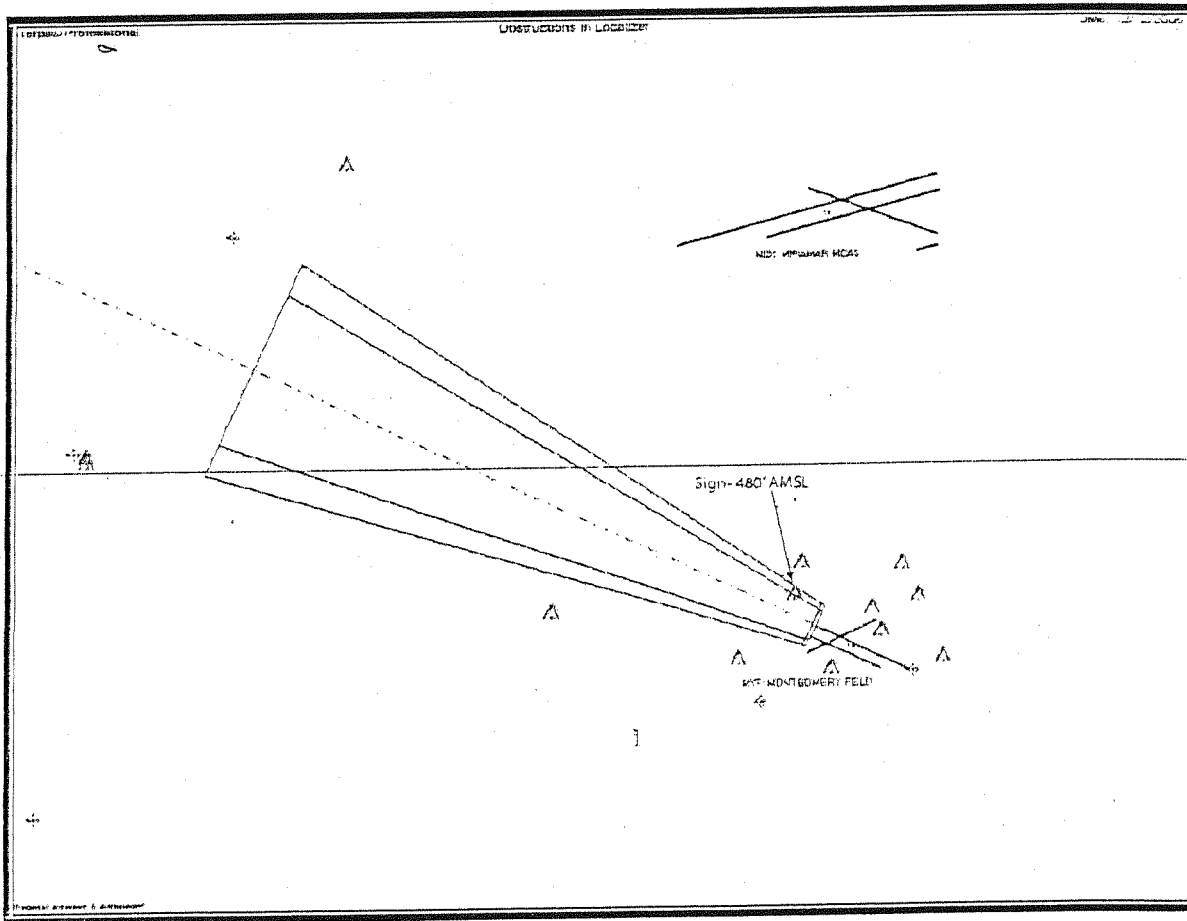


Figure 9

The only obstacle within the protected areas for the Localizer approach would be a sign which has an elevation of 480' AMSL. When the required obstacle clearance of 250' is applied to this obstacle, the resulting minimum descent altitude for the Localizer only approach would be 730' AMSL.

Precision ILS Procedure

The final approach segment originates 200' from the landing threshold point and ends at the precision final approach fix. The primary area consists of the "W" and "X" obstacle clearance surfaces (OCS). The secondary area consists of the "Y" obstacle clearance surface. (Figure 10)

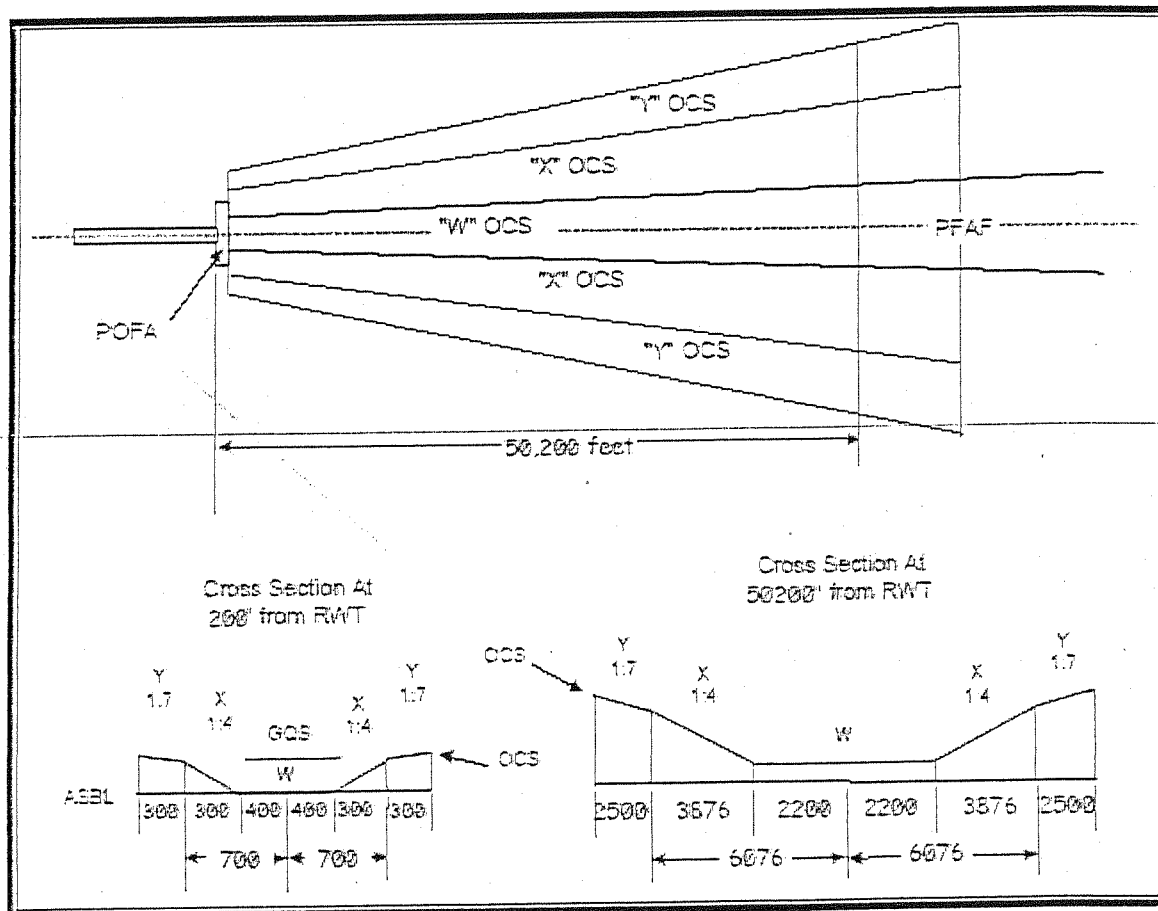


Figure 10

Figure 11 shows the precision final approach course which is 4.5 Nautical Miles in length. The figure also shows any obstructions that exist in the two primary surfaces and secondary protected areas which must be taken into account when determining the minimum descent altitude for this precision approach. The "W" area is shown in red; the "X" area is shown in gray, and the secondary "Y" area is shown in green.

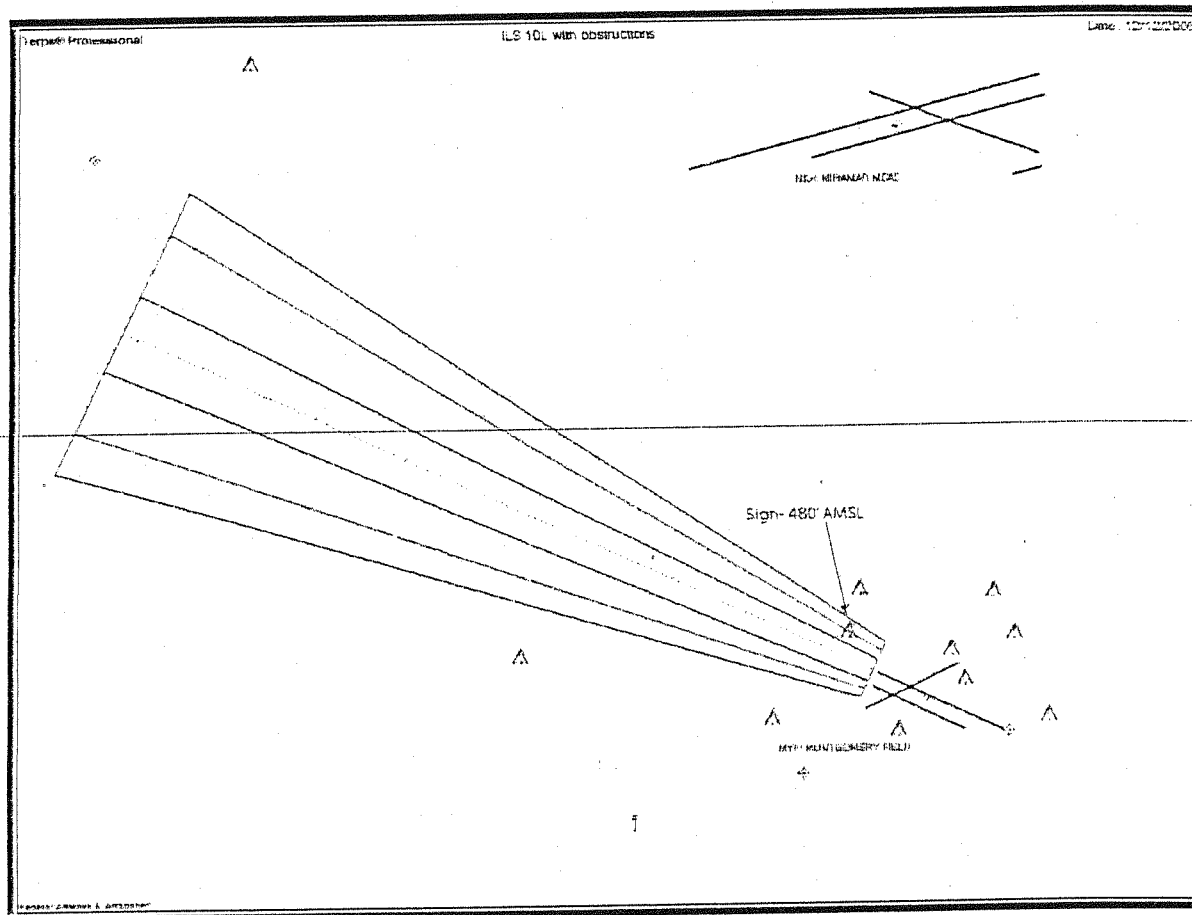


Figure 11

The only obstacle within the protected surfaces is a sign which is 480' AMSL. This sign is located within the primary "X" surface. A TERPS analysis was completed for this sign to determine how it would affect the minimum descent altitude for this precision approach using TERPS version 2006.7. The results are shown in Figure 12.

ILS19 - PRECISION LANDING SYSTEM - PROCEDURE ANALYSIS	
*** 480' SIGN ***	
MONTGOMERY FIELD - Runway: 10L	
Date: 12-11-2006 Time: 16:35:05	
<u>STUDY OBJECT DATA</u>	
Study Latitude:	32° 49' 17.11"
Study Longitude:	117° 8' 51.72"
Ground Elevation:	416' AMSL
AGL Height:	64' AGL
Overall Elevation:	480' AMSL
<u>PRECISION INSTRUMENT APPROACH PROCEDURE ANALYSIS</u>	
Along Track Distance:	1140.7 feet.
Abeam Distance:	683.8 feet.
PROCEDURE: DNE 'X' Surface below: 28 Ft.	
<u>MISSED APPROACH PROCEDURE (MAP) ANALYSIS (ZONE 1)</u>	
MAP Along Track Distance:	2101.3 feet.
Abeam Distance:	684 feet.
MISSED APPROACH: MAP Not To Exceed 429' AMSL	
<u>PRECISION PROCEDURE DATA</u>	
OCS Origin Latitude:	32° 49' 6"
OCS Origin Longitude:	117° 8' 42.08"
FAP Latitude:	32° 51' 18.677"
FAP Longitude:	117° 13' 33.67493"
In Bound Course Heading:	101.9
Distance to FAP:	4.5
<u>DECISION HEIGHT (DH) DATA</u>	
DH Latitude:	32° 49' 19"
DH Longitude:	117° 9' 17"
TRE:	414' AMSL
Decision Height:	635' AMSL
TCH:	41 feet
Glide slope angle:	3 degrees
Runway Threshold Elevation:	413.6' AMSL
GPI:	782 feet
DH Point Distance:	3442 feet
Terps® Version 2006.7.29 Airspace® and Terps® are registered ® trademarks of Federal Airways & Airspace® Copyright © 1989 - 2006	
The mathematical algorithms used by this program are derived directly from Federal Aviation Administration (FAA) Orders on Instrument Flight Procedures.	

Figure 12

The TERPS analysis revealed that a minimum descent altitude for a precision approach to 10L could be as low as 635' AMSL. The analysis assumed a 3 degree glide slope and a threshold crossing height (TCH) of 41' AGL as shown in the red box of Figure 12.

VFR Traffic Pattern

There are many variables that influence the establishment of airport arrival and departure flows. Structures in the traffic pattern airspace may adversely affect air navigation by being a physical obstruction to air navigation or by distracting a pilot's attention during a critical phase of flight. The categories of aircraft using the airport determine airport traffic airspace dimensions. Figure 13 shows the VFR traffic surfaces which must be evaluated to determine their affect on VFR air traffic.

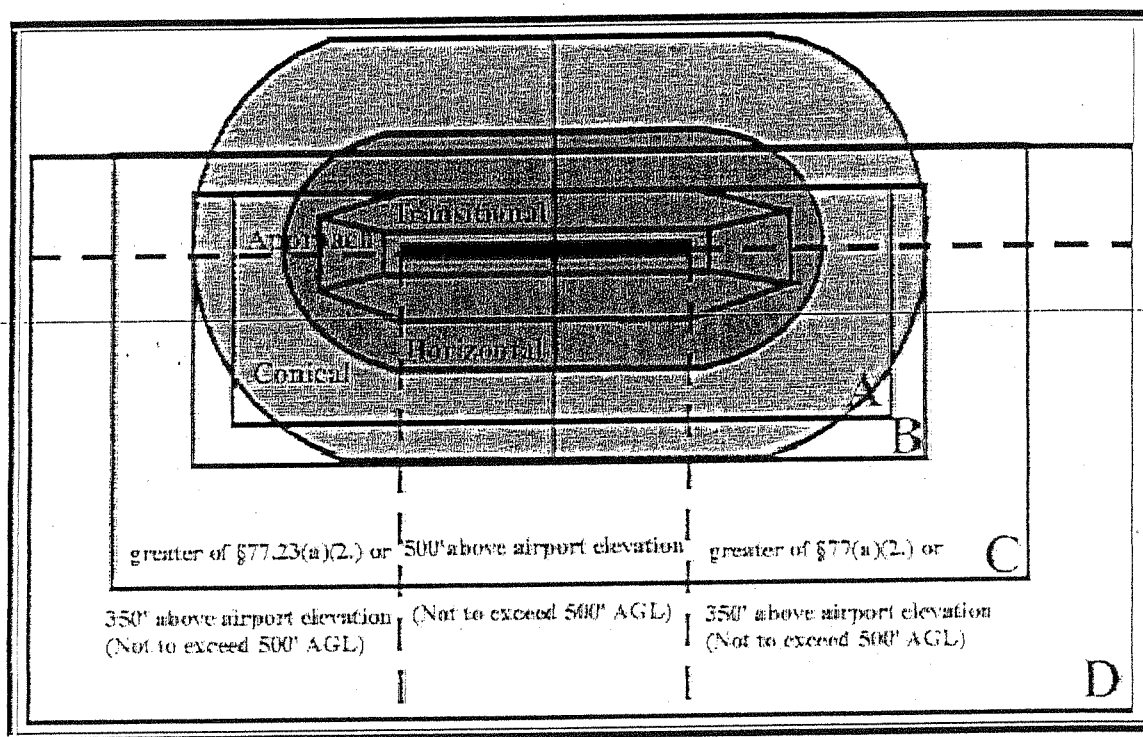


Figure 13

Structures which exceed 577' AMSL and that are within 10,000' of the Montgomery Field runways would exceed the VFR horizontal surface, and therefore could possibly have an adverse affect on VFR traffic using the airport. It would be possible to avoid any VFR traffic conflicts by requiring aircraft in the traffic pattern to make either their base or crosswind turns west of Highway 163. Pilots would need to be made aware of these requirements in such publications as the Airport Facility Directory and by announcing them on the Automated Terminal Information Service (ATIS).

Environmental Considerations

Most new Instrument Flight Procedures will require some form of environmental impact assessment be conducted by the FAA. Some of the topics to be evaluated are:

- Are there parks, recreation areas, churches, historic properties, or schools located under the flight path or near the airport?
 - Are there wildlife areas or endangered species located on or near the airport?
 - Are there properties located near the airport, which could be effected by noise from aircraft using the airport?
 - Are there noise sensitive areas, which will be over flown by aircraft below 3,000 feet Above Ground Level (AGL) using the approach?
 - Has the airport received any noise complaints in the last 3 years? If yes, from whom?
 - Are the community leaders aware of this request for an instrument approach?
 - Will there be an increase in aircraft operations due to the new instrument approach procedure? If yes, estimate the number.
 - In regard to air quality, is the airport located in an area for non-attainment? (This means that ozone, carbon monoxide, lead, particulate matter, sulfur dioxide, or nitrogen dioxide, exist in high quantities at times during the year and efforts are being made to reduce their levels.)
-

The weather conditions at Montgomery Field Airport are such that over 90% of instrument approaches are to the west on Runway 28R. It is extremely rare to have winds from the east and have an associated low cloud cover. Easterly winds are typically associated with the Santa Ana Winds which are very hot and dry. Therefore, because of the infrequent necessity for, and use of the approach, it is likely that a preliminary environmental assessment will show the absence of any significant impacts on the above parameters.

Consultants Conclusion:

The addition of an Instrument Approach Procedure to Montgomery Field Airport would be a viable option in order to eliminate the need for aircraft to use the circle-to-land procedure north of the Runway 5/23 extended centerline. Implementation of an Instrument Landing System on Runway 10L would provide pilots with a reasonable option to use when instrument conditions exist and when winds are such that landing to the west is not practical. The addition of a precision instrument approach procedure would allow pilots to descend up to 245' lower than what they could using the current circle-to-land procedures.

The addition of an instrument approach procedure to Runway 10L would keep pilots from needing to circle north of extended Runway 5/23 centerline during instrument conditions. By including a restriction of not authorizing circling north of the 5/23 Runway centerlines when using the current ILS procedure, new structures north of the airport that exceed 580' AMSL would not be out of compliance with FAA Terminal Instrument Procedures (TERPS) while still allowing pilots to land on any of the runways during instrument conditions.

Figure 14 shows the proposed flight paths to all the runways during instrument conditions. The green circular region indicates where aircraft are currently guaranteed separation from obstructions. The flight paths show that with the implementation of the new procedure all the runways would still be usable during instrument conditions.

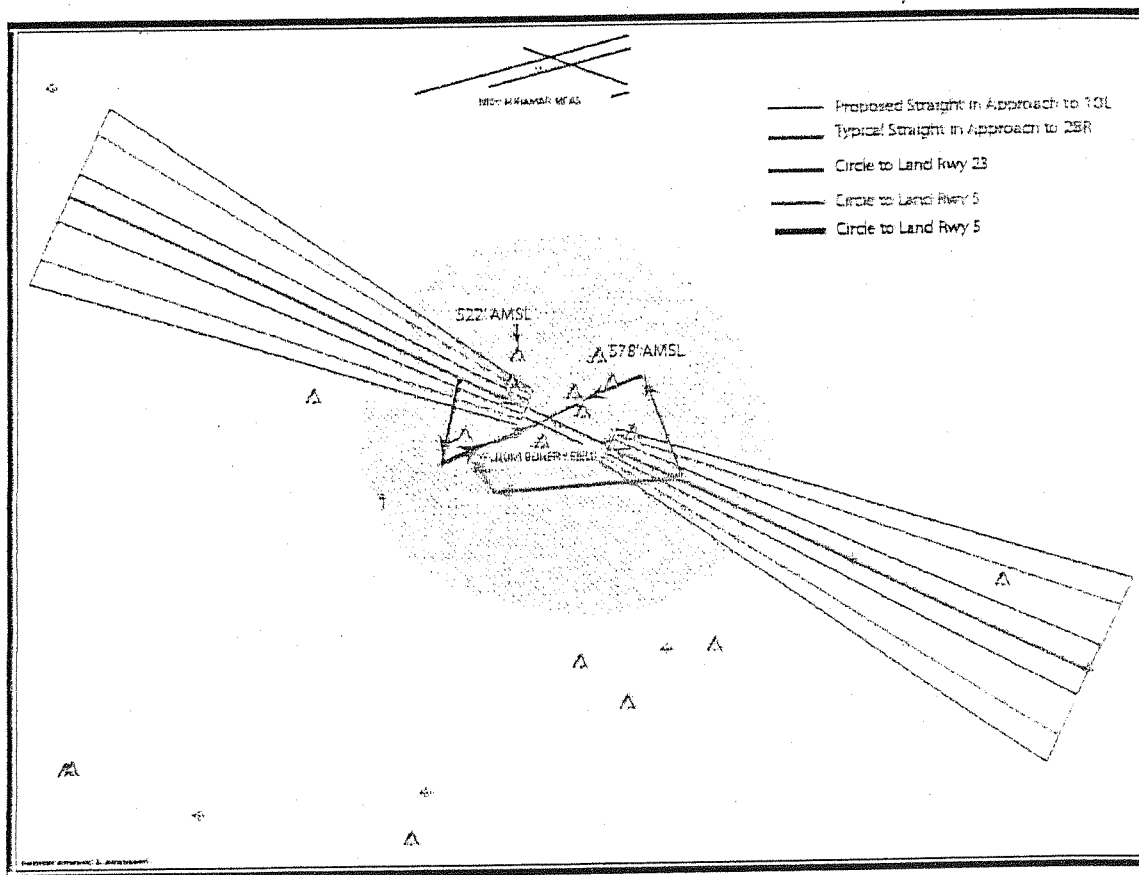


Figure 14

A precision instrument procedure could allow approaches as low as 635' AMSL when visibility is 3/4 of a statute mile. The non precision "localizer" approach could allow approaches as low as 730' AMSL when visibility is 1 statute mile.

Structures which exceed 577' AMSL and that are within 10,000' of the Montgomery Field runways would exceed the VFR horizontal surface, and therefore could possibly have an adverse affect on VFR traffic using the airport. It would be possible to avoid any VFR traffic conflicts by requiring aircraft in the traffic pattern to make either their base or crosswind turns west of Highway 163. Pilots would need to be made aware of these requirements in such publications as the Airport Facility Directory and by announcing them on the Automated Terminal Information Service (ATIS).

The installation of an Instrument Landing System is a feasible option to allow for increased development north of Montgomery Field. Installing this type of system would allow all the runways to be used during instrument conditions while actually increasing the options for pilots. The development and installation of a new ILS at Montgomery Field would provide a precision, rather than non-precision approach to Runway 10L. This would improve access to the airport by facilitating a lower minimum descent altitude than what is currently available with the circling approach to Runway 10L. Additionally, the development of a localizer, or non-precision approach to Runway 10L would also provide improved access over the current circling approach, although not to as great an extent as an ILS. By not authorizing aircraft to circle north of the 5/23 extended runway centerline the buildings north of airport would be in compliance with TERPS. Also, by adjusting the traffic pattern the new buildings would not be in conflict with the VFR traffic using the airport.

Ted Sexton - Re: Drawings

From: "Thomas Kamman" <tskamman@sbcglobal.net>
To: "Ted Sexton" <tsexton@sandiego.gov>
Date: 5/19/2007 7:14 AM
Subject: Re: Drawings

I changed the height shown in Slide 9 to reflect the data shown on the Sunroad building drawings. I think the statement about the City not approving other buildings on the property above 160 feet is premature and should be changed to something more generic such as: "won't approve a building height above that approved by the FAA". Thanks for the opportunity to review the presentation. Good luck on Tuesday.

Ted Sexton <tsexton@sandiego.gov> wrote:

OK, no problem. Hope you got my presentation

Ted

>>> <tskamman@sbcglobal.net> 5/18/2007 3:03 PM >>>

I have some data from Sunroad but can't review it on my Blackberry.

Will send to you tonight.

Sent via BlackBerry from Cingular Wireless

**Ted Sexton - DRAFT Presentation to FAA (Obstruction
Evaluation Service) re: Sunroad Centrum I Buiding, S.D. CA**

From: Ted Sexton
To: tstory@sunroadenterprises.com
Date: 5/21/2007 5:09 PM
Subject: DRAFT Presentation to FAA (Obstruction Evaluation Service) re:
Sunroad Centrum I Buiding, S.D. CA

Tom:

Attached please find the Draft presentation reflecting the Company s/city latest discussions on building
height/dimensions modifications.

Thanks

Ted

Ted Sexton - DRAFT Presentation to FAA (OES) re Centrum I building in S.D. CA

From: Ted Sexton
To: brian.armstrong@FAA.gov; karen.mcdonald@FAA.gov
Date: 5/21/2007 5:25 PM
Subject: DRAFT Presentation to FAA (OES) re Centrum I building in S.D. CA

Brian/Karen:

Here is the presentation to Kevin Haggerty skd for Tuesday in Dallas.

I will brief you on the results ASAP after the meeting.

Thanks

Ted

From: <Karen.McDonald@faa.gov>
To: "Ted Sexton" <tsexton@sanidiego.gov>
Date: 5/21/2007 5:30:36 PM
Subject: Re: DRAFT Presentation to FAA (OES) re Centrum I building in S.D. CA

Thank you

KAREN L. MC DONALD
Los Angeles OES
310 725-6557

e-file 7460-1 on-line @ public web <http://oeaaa.faa.gov>
and
register for electronic notification of public OE notices



4445 Eastgate Mall
Suite 400
San Diego, California
92121
(858) 362-8500
Fax: (858) 362-8448

May 21, 2007

James Barwick
Real Estate Assets Director
1200 Third Avenue, Suite 1700
San Diego, CA 92101

**Confidential & Privileged Settlement Communication
Under Evidence Code Section 1152**

Dear Jim,

Thank you for the opportunity to discuss with you a solution to the FAA issues regarding the Sunroad Centrum I office project. We understand that the solution the FAA seeks of the City goes beyond alterations to the office building and encompasses changes in how the City's permit process integrates San Diego Regional Airport Authority review as well as changes to flight patterns in vicinity of Montgomery Field. Sunroad is committed to being a partner with the City and the FAA in reaching an equitable solution that satisfies the legitimate concerns of all parties with an emphasis on public safety for residents and the pilots alike.

We firmly believe that changes to flight patterns around Montgomery Field are, of themselves, sufficient to ensure a safe flight environment. We also acknowledge that a new 7460-1 application is the proper method for securing a No Hazard Determination from the FAA and as such we are willing to consider further and very costly alterations to the Centrum I building.

In addition to the six (6) points conditionally outlined in our April 25, 2007 letter to James T. Waring, Sunroad will agree to reduce the overall height of the building by eliminating the parapet (3' at its highest point above the roof) and limit the overall roof height to 166.25 feet ($\pm 0.5\%$). Our willingness to pursue this alteration is predicated on the City's Chief Building Official allowing the elimination of the parapet in favor of a retractable 'fall barrier' or other similar device that would be used whenever workers are required to work on the buildings roof. And if necessary, Sunroad will also agree to reduce the building's maximum height by lowering the elevator penthouse and mechanical equipment enclosure by two (2) feet.

As outlined in our April 25, 2007 letter, these concessions are conditioned on (1) receipt of a No Hazard Determination by the FAA on Centrum I and (2) the City's dismissal of its complaint against Sunroad with prejudice, and a general release of all claims concerning Centrum I, II or III.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard D. Vann".

Richard D. Vann
Executive Vice President

RV/TS

AIR NAVIGATION HAZARD ELIMINATION PROPOSAL SUNROAD CENTRUM 12 OFFICE BUILDING San Diego, CA

Presented by: Jim Barwick, Director, Real Estate Assets,
City of San Diego, CA
Ted Sexton, Vice President, Regulated
Operations, San Diego County Regional
Airport Authority

1

Purpose of Proposal

- Ensure safest possible operating conditions exist at Montgomery Field Airport
- Restore public and user confidence in Montgomery Field flight operations and airspace management
- Ensure the orderly development of the airport and the community surrounding the airport
- Avoid unduly constraining airfield capability or reducing service levels

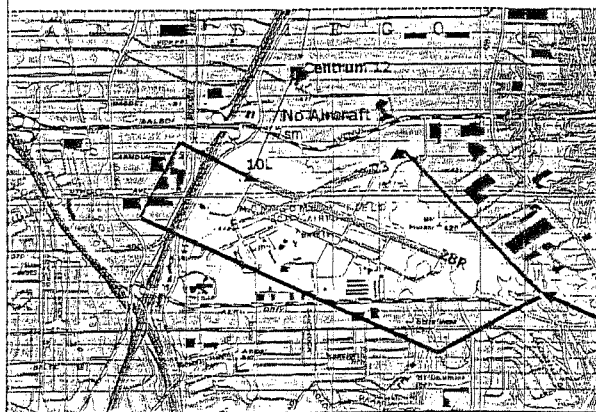
2

Summary of Remedial Airspace Actions at MFY (Interim)

- Modify Flight Procedures to restrict circling approaches north of Runway 5/23
- Continue authorization to circle to land Runway 23
- Continue authorization to circle south of Airport to land Runways 5 and 10L
 - Circling south currently authorized by FAA but not used
 - New procedure expected to be used less than 2% of annual operations

3

MYF Circling Approaches Runways 5/23 and 28R/10L

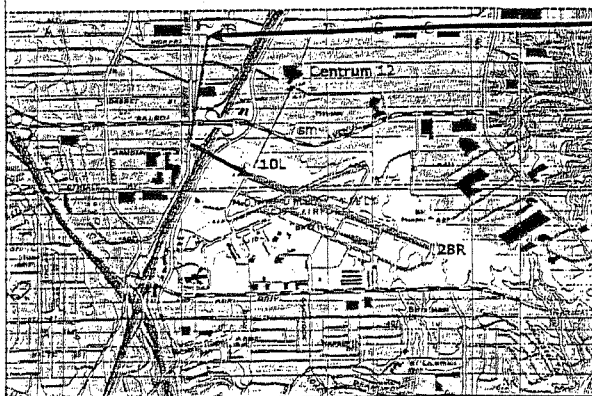


Summary of Remedial Airspace Actions at MFY (Permanent)

- Require VFR (Visual Flight Rules) arrival aircraft to cross Hwy 163 prior to turning base to land Runway 10L
- Elevate VFR pattern altitude for 10L (right hand pattern) from 800'AGL to 1,000'AGL
 - Ensures maximum safe separation between aircraft and obstructions to the north

5


MYF North VFR Downwind Entry for Runway 10L



Summary of Remedial Airspace Actions at MFY (Long Term)

- Partner with FAA to install straight-in Instrument Approach Procedure to Runway 10L
 - Provides airport with significant increase to airfield capability
 - Eliminates need for circling approaches to 10L


7



City of San Diego Flight Safety Improvements at Montgomery Field Airport

Prepared for: Office of the Mayor
Prepared by: Real Estate Assets Department


1



Summary of Obstruction Hazard Situation Montgomery Field Airport

- Building obstruction exists north of the Airport determined by FAA to be a "hazard to air navigation"
- City has put in place two separate remedies:
 1. Reduce the building height through legal means - Anticipate a far-reaching legal process taking years to resolve
 2. Clear the airspace surrounding the building by removing aircraft operations in its immediate vicinity - Near Term and Long Range Plan

2



Near Term Plan to Improve Flight Safety at Montgomery Field Airport

- City, as airport owner/operator, has coordinated with the FAA to implement immediate flight safety improvements by slightly modifying local flight procedures
 - Provides for greater safety margins in good weather and during instrument conditions

3

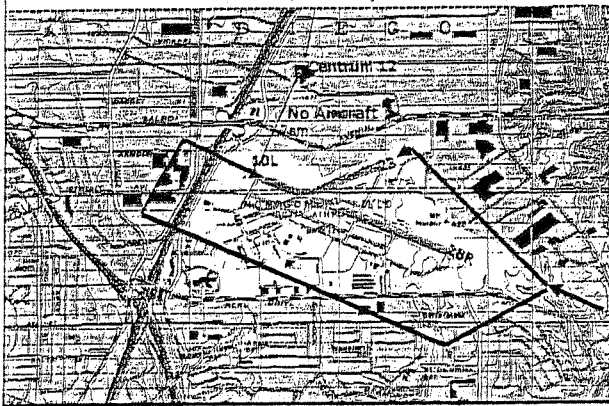


Summary of Flight Safety Improvements at Montgomery Field Airport (Near Term)

- Modify instrument procedures to restrict circling approaches north of Runway 5/23
- Continue authorization to circle to land Runway 23
- Continue authorization to circle south of Airport to land Runways 5 and 10L
 - Circling south currently authorized by FAA but very infrequently used
 - This procedure will be used less twice per day (annual average)—minimal impact on surrounding community

4

MYF Circling Approaches Runways 5/23 and 28R/10L

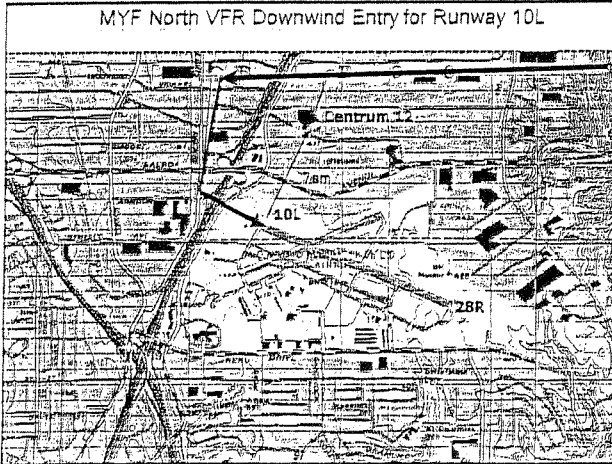


Summary of Flight Safety Improvements at Montgomery Field Airport (Near Term)

- Require VFR (Visual Flight Rules) arrival aircraft to cross Hwy 163 prior to turning base to land Runway 10L
- Elevate VFR traffic pattern altitude for 10L/28R from 800'AGL to 1,000'AGL
 - Ensures maximum safe separation between aircraft and obstructions to the north

6


MYF North VFR Downwind Entry for Runway 10L



Summary of Flight Safety Improvements at Montgomery Field Airport (Long Term)

- Partner with FAA to install straight-in Instrument Approach Procedure to Runway 10L
 - Provides airport with significant increase to airfield capability
 - Eliminates need for circling approaches to 10L
 - Needs to be studied for:
 - operational feasibility
 - environmental and community impacts

8



Benefits of City Program to Modify Flight Procedures at Montgomery Field Airport

- Ensures safest possible operating conditions exist at Montgomery Field Airport
- Restores public and user confidence in Montgomery Field flight operations and airspace management
- Permits the orderly development of the airport and the community development north of the airport
- Avoids unduly impacting the south community
- Avoids negative impacts on airfield capability or on aircraft operators

9



Actions taken by City and FAA

- FAA endorses all proposed flight safety improvements and has placed City request for new instrument procedure in queue for installation (18 months to two years)
- Airport to meet with airport user groups to brief aircraft operators and community stakeholders on impacts

10

AIR NAVIGATION HAZARD
ELIMINATION PROPOSAL
**SUNROAD CENTRUM 12 OFFICE
BUILDING**
San Diego, CA

Presented to: Kevin Haggerty Manager, Obstruction Evaluation/Airport
Airspace Analysis (OE/AAA), Federal Aviation Administration

Presented by: Jim Barwick, Director, Real Estate Assets, City of San Diego, CA
Ted Sexton, Vice President, Regulated Operations, San Diego
County Regional Airport Authority

1

Purpose of Proposal

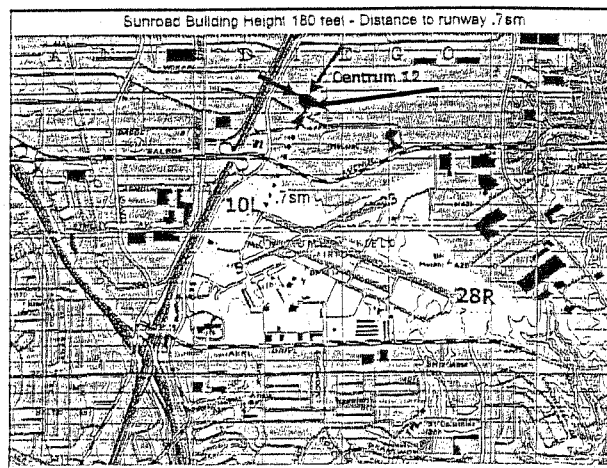
- Ensure safest possible operating conditions exist at Montgomery Field Airport
- Restore public and user confidence in Montgomery Field flight operations and airspace management
- Ensure the orderly development of the airport and the community surrounding the airport
- Avoid unduly constraining airfield capability or reducing service levels

2

Issue Summary

- Facility located .7 sm north of Montgomery Field Airport in San Diego California
- Determined to be an obstruction amounting to a hazard by FAA-OES (2006-AWP-4601-OE)
 - Building height of 180 feet AGL penetrates obstacle clearance surface for circling approaches to the airport
 - Building penetrates FAR Part 77 VFR Horizontal Surface by approximately 20 feet

3



Background and Current Status

- Builder relied on consultant advice ("grandfathered") and city permits in determining permissible height of building
- City jurisdiction did not seek an airport land use compatibility determination (FAA Height Limitation) because:
 - MYF Comprehensive Land Use Plan (CLUP) - adopted 1984/Amended 1996 -- had facility located outside MYF Airport Influence Area (AIA)
 - City Airport Environs Overlay Zone mirrored CLUP--no height restrictions imposed on property

Background and Current Status (cont.)

- Project Environmental Impact Report (EIR) underwent thorough public review process - no adverse comments regarding height or proximity to airport operations
- All respondents favorably endorsed project at 180 feet AGL
 - Community Planning Groups
 - Caltrans Bureau of Aeronautics
 - Airport Advisory Committee
 - U.S. Military
 - Area residents who provided comment
- City Planning Commission recommended approval, as proposed, and City certified EIR with building height at 180 feet AGL
- February 2006 City approved Substantial Conformance Review (SCR) and in March 2006, issued building permit (foundation and frame) at 180 feet AGL

Key Regulatory Events in 2006

- April 2006 FAA reviewed Aeronautical Airspace Case Study (2006-AWP-1636-OE) and issued presumed hazard determination at 180 feet
- June 2006 FAA reviewed Aeronautical Airspace Case Study (2006-AWP-3876-OE) and issued a no hazard determination at 160 feet
- July 2006 City issued final Building Permit for completion of the building at 180 feet
- August 2006 FAA reviewed Aeronautical Airspace Case Study, Form 7460-2, Notice of Completion (2006-AWP-4601-OE) and issued final determination of hazard at 180 feet
- October 2006 City issues "Stop Work Order" based on alleged violation of Federal Obstruction Standards (FAR Part 77) and presumed risk created by "Public Nuisance"

Current Issue Status

- Building work authorized only on lower floors
- No building occupancy permit issued
- Matter in litigation between City and Sunroad Enterprises
- Circling Minimums for MFY Minimum Descent Altitude (MDA) raised from 880 MSL to 960 MSL - Flight operations unaffected

Issue Resolution Proposal Builder Actions

- Builder will modify building roof size and maximum height
 - Remove architectural design element and parapet
 - reduces aerial footprint and lowers 86% of building elevation to 166.3 feet
 - Lower mechanical penthouse area (remaining 14% & highest area of obstruction) by two feet to 176 feet
- Cost to Builder--@ \$1.0 million

9

Issue Resolution Proposal Builder Actions

- Builder will partner with Airport operator (City) to fund and install Instrument Approach Procedure for 10L Cost -- approx. \$1.3 million (Total)
- Builder will grant avigation easement to City for all airspace above building and future office building projects
- Builder will submit all future projects for aeronautical study under FAR Part 77 and abide by determination

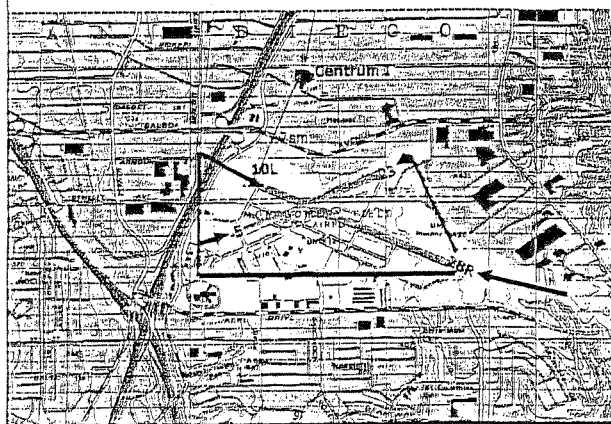
10

Issue Resolution Proposal City of San Diego

- City will partner with FAA to modify instrument approach procedures for 10L to eliminate aircraft circling north of runway. Aircraft will be authorized to circle south of runway to land 10L/28R
 - Procedure removes aircraft from adjoining airspace during circling approaches (estimated less than three percent of annual operations)
 - Maintains landing capability during instrument conditions
 - Recommend present circling approach weather minimums be retained

11

MYF Circling Approaches Runways 5/23 and 10L

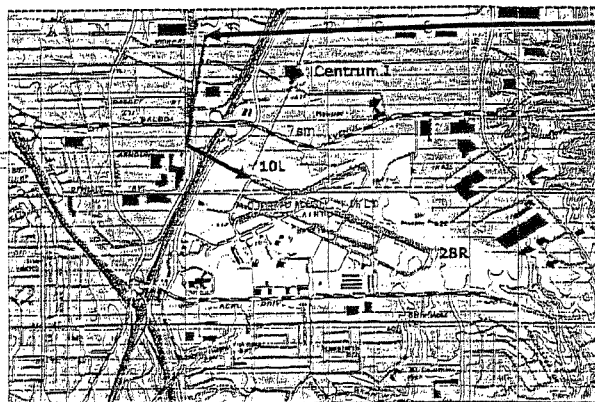


Issue Resolution Proposal City of San Diego

- City proposes to modify VFR arrival procedures to require aircraft cross Highway 163 prior to turning final for 10L
- Similarly requires aircraft in Touch & Go pattern 10L/28R to cross Highway 163 prior to turning downwind
 - De-conflicts VFR aircraft with buildings to north
 - Notify airmen through permanent NOTAM, Airport Field Directory (AFD) and Automated Terminal Information System (ATIS) recordings

13

MYF North VFR Downwind Entry for Runway 10L



Issue Resolution Proposal (cont)

- City will develop Capital Improvement Project (CIP) with Sunroad funding and partner with FAA to install navigation equipment for straight-in approach to 10L
- City has incorporated FAR Part 77 criteria and notification requirements in its public permitting process
- City is referring all project applications meeting FAR Part 77 criteria (within AIA) to the Airport Land Use Commission for consistency determinations
- City/Community/ALUC to finalize draft ALUCP policy decisions for MYF scheduled for summer of 2007
- Specifically, City will not approve building permits on the remaining Sunroad property above 160 feet, or as determined by FAA
- City will work closely with FAA on aeronautical case studies submitted for both Montgomery and Brown Field Airports to avoid repetition of this situation

15

Summary of Benefits

- Operational risk factors well within FAA standards
- Flight safety margins restored
- Builders put on notice to fully comply with federal airspace notification requirements and respect FAR Part 77 surfaces
- City's internal processes improve and coordination with Land Use Authority strengthens – no repeat of this occurrence
- City moves forward with improvements to MYF infrastructure and orderly development of community assets
- Increased public trust in City & Land Use Authority, Raises confidence in FAA decision making


16



Next Steps - FAA

- City participates with FAA airspace planners to modify local airspace procedures at MYF
- City/FAA confer on aeronautical airspace case study to ensure new flight conditions meet FAA guidelines on safe operating conditions at airport
- City commences planning work for new Instrument Approach Procedure for 10L

17



MYF Issue Resolution Proposal

Questions or Comments?

18

City of San Diego Flight Safety Improvements at Montgomery Field Airport

Prepared for: Office of the Mayor

Prepared by: Real Estate Assets Department

1

Summary of Obstruction Hazard Situation Montgomery Field Airport

- Building obstruction exists north of the Airport determined by FAA to be a "hazard to air navigation"
- City has put in place two separate remedies:
 1. Reduce the building height through legal means —Anticipate a far-reaching legal process taking years to resolve
 2. Clear the airspace surrounding the building by removing aircraft operations in its immediate vicinity — Near Term and Long Range Plan

2

Near Term Plan to Improve Flight Safety at Montgomery Field Airport

- City, as airport owner/operator, has coordinated with the FAA to implement immediate flight safety improvements by slightly modifying local flight procedures
 - Provides for greater safety margins in good weather and during instrument conditions

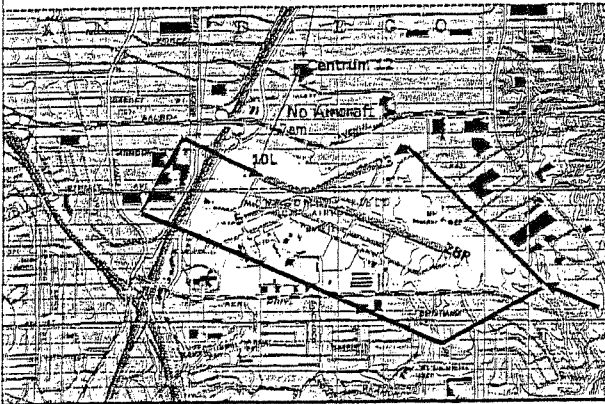
3

Summary of Flight Safety Improvements at Montgomery Field Airport (Near Term)

- Modify instrument procedures to restrict circling approaches north of Runway 5/23
- Continue authorization to circle to land Runway 23
- Continue authorization to circle south of Airport to land Runways 5 and 10L
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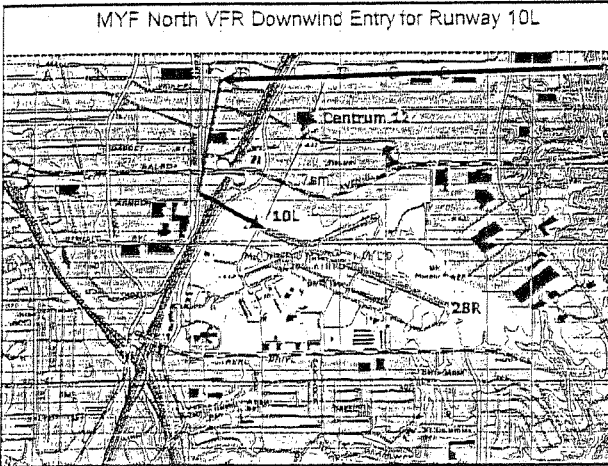


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16

Exhibit 14

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

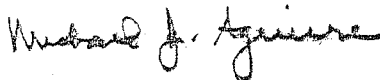
(619) 236-6220

DATE: June 19, 2007
TO: Honorable Mayor Jerry Sanders and City Council
FROM: City Attorney Michael J. Aguirre
SUBJECT: Stop Work and Use Order – Sunroad Centrum I Building

I request that the Mayor issue the enclosed Stop Work and Use Order which requires Sunroad Enterprises to stop all construction, maintenance, and use of the Sunroad Centrum I Building. The building is a public nuisance and an airport hazard pursuant to the San Diego Municipal Code and California law.


The Federal Aviation Administration has determined that the Sunroad tower is a hazard to air navigation at Montgomery Field Airport. Today, the enclosed order was endorsed by the Community Airfields Association of San Diego as well as the Aircraft Owners & Pilots Association.

Also enclosed please find documents which demonstrate that Sunroad Enterprises has consistently misled and defied the City of San Diego, the California Department of Transportation, and the Federal Aviation Administration, and has wholly disregarded both the law and the public's health, safety, and general welfare.



Michael J. Aguirre, City Attorney

STOP WORK AND USE ORDER

 <p>America's Finest City</p> <p>THE CITY OF SAN DIEGO</p> <p>Development Services Department 1222 First Avenue, MS 301 San Diego, CA 92101-4154</p>	<p>LOCATION: 8620 Spectrum Center Blvd.</p> <p>APN: 369-220-73; 369-220-51; 369-220-52; 369-220-53; 369-220-54; 369-220-55; 369-220-56; 369-220-57</p>
<p>RESPONSIBLE PERSON: Swinerton Builders (858) 622-4040 17140 Bernardo Center Drive San Diego, California 92128</p>	<p>MAIL ADDRESS FOR: <input type="checkbox"/> OWNER <input checked="" type="checkbox"/> CONTRACTOR <input type="checkbox"/> _____</p>

THIS STOP WORK AND USE ORDER is issued pursuant to San Diego Municipal Code sections 121.0205, 121.0309, and 121.0310 for all work, maintenance, and use of the premises at the above-listed location contrary to the provisions of the Land Development Code.

<p>DESCRIPTION OF VIOLATIONS: Construction, maintenance, and use of the Sunroad Tower, an airport hazard and public nuisance.</p>
<p>San Diego Municipal Code section 121.0302(a) - unlawful to maintain or use any premises in violation of the Land Development Code, without a required permit, or contrary to permit conditions;</p>
<p>California Public Utilities Code section 21659 – unlawful to construct or alter any structure at a height which exceeds federal obstruction standards (Title 14 of the Code of Federal Regulations, Part 77, Subpart C) unless the Department of Transportation issues a permit;</p>
<p>San Diego Municipal Code section 121.0302(b)(4) – unlawful to maintain or allow the existence of any condition that creates a public nuisance;</p>
<p>San Diego Municipal Code section 12.0602 – City may abate any condition caused, maintained or permitted to exist in violation of any provisions of the Municipal Code or applicable state codes which constitutes a public nuisance;</p>
<p>San Diego Municipal Code section 11.0210 – a public nuisance is any condition caused, maintained, or permitted to exist which constitutes a threat to the public's health, safety and welfare, or which significantly obstructs, injures or interferes with the reasonable or free use of property in a neighborhood, community or to any considerable number of persons; also has same meaning as set forth in California Civil Code section 3479;</p>
<p>California Civil Code section 3479, 3480 – anything which at the same time affects an entire community or neighborhood or considerable number of persons which is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property;</p>
<p>California Government Code section 50485.2 – the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question;</p>
<p>California Public Utilities Code section 21017 – an airport hazard is any structure or use of land which obstructs the air space required for flight of aircraft in landing or taking off at an airport or which is otherwise hazardous to the landing or taking off.</p>

NAME OF INSPECTOR/STAFF (Print) _____

OFFICE TEL. NO. & TIME AVAILABLE _____

DATE _____

Exhibit 15

§121.0312 Restoration and Mitigation as a Remedy

- (a) In addition to other enforcement remedies provided for in Municipal Code Chapter 1, the City Manager may order the reasonable restoration of a *structure, premises*, and any adjacent and affected site to its lawful condition or may require reasonable mitigation. These requirements may be attached as conditions to applicable permits or enforcement actions and orders as appropriate.
- (b) The City Manager shall order the restoration of *grading* undertaken without a permit, unless technically infeasible. The restoration shall be conducted in accordance with Section 142.0150. No further permits for the *premises* shall be processed until the restoration has been completed and specified performance criteria have been met as required by the City.
- (c) Any restoration or mitigation imposed by the City Manager or Building Official shall be at the sole cost of the responsible person.
- (d) Mitigation may be appropriate where the City Manager determines that restoration of the *premises* or adjacent site to its pre-existing condition is not feasible or that irreparable damage has been done to the *premises*, or *historical resources*.
- (e) Mitigation may include the purchase or exchange of like-kind real property or *structures* of a similar or greater quality and value, or other appropriate measures.
- (f) The City Manager or Building Official may require a combination of restoration and mitigation of the *structure* or *premises* if warranted by the circumstances.
- (g) The City Manager or Building Official may promulgate additional administrative guidelines and regulations to implement and clarify the authority to require restoration and mitigation.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

(Amended 11-28-2005 by O-19444 N.S.; effective 2-9-2006.)

Exhibit 16

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